

# Diplomarbeit

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“Terrorism Prevention in the United Nations”

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## List of Abbreviations

CARICOM	Caribbean Community Secretariat
cp.	compare
CTED	Counter-Terrorism Executive Directorate
CTC	Counter-Terrorism Committee
CTITF	Counter-Terrorism Implementation Task Force
DNA	Deoxyribonucleic acid
EC	European Community
ECOSOC	Economic and Social Council
ETA	Euskadi Ta Askatasuna (Basque Homeland and Freedom)
FARC	Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia)
FARP	Fuerzas Armadas Revolucionarias del Pueblo (Mexico) – (Revolutionary Armed Forces of the Village)
FATF	Financial Actions Task Force on Money Laundering
IAEA	International Atomic Energy Agency
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICRG	FATF International Cooperation Review group
ICTR	International Criminal Tribunal of Rwanda
ICTY	International Criminal Tribunal of the former Yugoslavia
ILO	International Labour Organization
IMO	International Maritime Organization
INLA	International Nuclear Law Association
Interpol	International Criminal Police Organization - ICPO
IRA	Irish Republican Army
JRA	Japanese Red Army
GA	General Assembly
GdF	Guardia di Finanza (Finance Police of Italy)
MOK or MEK	Mujahedin-e Khalq Organization
NATO	North Atlantic Pact Organization
OAS	Organization of American States
OLA	Office on Legal Affairs
OSCE	Organization for Security and Cooperation in Europe
PFLP	Popular Front of the Liberation of Palestine

PLO	Palestine Liberation Organization
SIDS	Small Island Developing States
SC	Security Council
SCR	Security Council Resolution
TPB	Terrorism Prevention Branch
UN	United Nations
UNAFEI	United Nations Asia and Far East Institute
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNDESA	United Nations Department of Economic and Social Affairs
UNDP	United Nations Development Programme
UNDPA	United Nations Department of Political Affairs
UNDPI	United Nations Department of Public Information
UNICRI	United Nations Interregional Crime and Justice Research Institute
UNODC	United Nations Office on Drugs and Crime
UK	United Kingdom
US	United States (of America)



# I. Introduction

## B. Foreword

The UN is facing different problems besides deadly diseases, environmental or terrorist threats. Also the role of the UN has to be discussed. Beyond question, the UN has to reform in order to provide effective answers to these threats.

Terrorism is one of the most threatening atrocities of global humanity and a threat for international safety. In a global world in which we are living no country can combat this threat alone. *“Today, terrorism knows no bounds; it targets no particular nationality, respects no religion and recognizes no exceptions. The nature of terrorism has also changed. Once a threat to individual nations, today terrorism is an international phenomenon.”*<sup>1</sup>

Terrorism is a strategy of violence, motivated by political, religious and national reasons. This phenomenon is not new, only the forms of terrorism have changed.

I chose this topic because I was working as an intern in the Terrorism Prevention Branch in the United Nations Office on Drugs and Crime (TPB/UNODC). I gained a lot of new experience and impressions. I decided to dedicate my thesis to this very interesting and also extremely important topic. For this reason the topic of this thesis is: Terrorism Prevention in the United Nations.

During my research for this present paper and also during my internship at the Terrorism Prevention Branch I realized the limit of my legal knowledge. Because of my limited legal background I was facing new challenges and I had to learn new skills to be able to work with the legal language. But, nevertheless, I can't deny that I was interested in this challenge and that I did my best to facilitate the comprehension of this thesis.

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<sup>1</sup> cited Antonio Maria Costa, Executive Director of UNODC, TPB Brochure, March 2008

## C. Introduction

*“Terrorism is a threat to all that the United Nations stands for: respect for human rights, the rule of law, the protection of civilians, tolerance among peoples and nations, and the peaceful resolution of conflict...”*

(Kofi A. Annan, former Secretary-General of the United Nations)<sup>2</sup>

Most terrorism related books start with reference to September 11<sup>th</sup> 2001 in the preface. September 11<sup>th</sup> changed the world into a more insecure place. The impact of this day leads the bureaucracy the creation of new institutions based on terrorist acts. Unfortunately, these efforts haven't been accurate enough to control terrorism. For this reason, I would like to investigate which institutions, measures or other documentaries have been provided on counter-terrorism matters. In particular those measures taken by the United Nations.

This thesis is subdivided into four main parts. The introductory part contains primarily a general introduction to the topic about terrorism prevention as well as my personal background. The topic will be presented in the Methodology chapter, starting with the interest in investigation, the theses, hypotheses and the question most commonly asked. Further on, the methods and theories used for this thesis will be introduced as well as the objective of this exposition. In this present paper practical aspects of the work of the Terrorism Prevention Branch are also included.

One already known thesis is that an increase of funds on counter-terrorism measures strengthens terrorism prevention. More input more output.

The second main part includes the theoretical part. This implicates a general overview of the role of the UN as a theoretical concept. Different approaches to different international theories are discussed, as well as a historical overview about the UN over the years. One of the main chapters in this theoretical part is about what terrorism prevention is in general. Another very interesting and often criticized point is the definition of terrorism. A general definition is difficult to be found and does not exist yet. The International Criminal Court does not see terrorism as an international crime. This recognition would be relevant for a definition of this phenomenon. In several UN Conventions and Resolutions there are special definitions for each Convention and Resolution. In this work it will be pointed out why a definition and an

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<sup>2</sup> cited Annan (2005), In larger freedom, p. 35

acceptance of the ICC are problematic. Moreover, an analysis will be disclosed about terrorism as an international crime.

International law is a key in preventing terrorism. Therefore, a chapter about terrorism and international law is included in this paper. Since 1937 the international community deals with terrorism and consequently, it's not a "new" phenomenon. Already the League of Nations ratified a convention to prevent and condemn terrorism. After the League of Nations the United Nations tried to fight against terrorism from a legal and political perspective.<sup>3</sup> Where terrorism comes from, the reasons behind it and what forms it can take, will also be discussed in the theoretical part.

Furthermore, this paper contains another chapter with reference to international criminal law, which is inevitable. Antonio Cassese has been recommended to me on this subject. Cassese points out that after the Cold War the gaps between rich and poor grew even bigger, and also the fundamentalism phenomenon lead others to terrorism as we know it today. Also the failure of sanctions by States was another reason that gave rise to terrorism.<sup>4</sup>

The third main part of this paper includes the empirical part which contains the practical work of the Terrorism Prevention Branch in particular and the measures taken by the UN in general on counter-terrorism. The importance of an anti-terrorism law on a national level will be included. Without an appropriate legal basis on a national level it is very difficult to prevent and condemn terrorism. A close analysis of the work of the Terrorism Prevention Branch is essential, as they are providing countries, upon request, with legal technical assistance in implementing the universal legal instruments on counter-terrorism matters. One main objective of the investigation of this paper is an analysis of the Terrorism Prevention Branch from a UN perspective. Theoretical relevant aspects to terrorism are Security Council Resolutions, General Assembly Resolutions as well as the 16 Conventions and Protocols. Furthermore, the UN Global Counter-Terrorism Strategy, the SC Counter-Terrorism Committee and its Executive Directorate and the UN Counter-Terrorism Implementation Task Force will be incorporated. What problems the realization of those measures provokes for the UN and TPB will be discussed in the empirical part.

The fourth part of this thesis includes some practical aspects of the work of the Terrorism Prevention Branch, including further details about the organization and experts comments on the aspects presented.

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<sup>3</sup> cp. <http://www.unodc.org/unodc/en/terrorism/index.html>

<sup>4</sup> cp. Cassese 2003, p.4

To complete this thesis a general conclusion about the main theses and hypotheses as well as the general asked questions will be given. Annexed are two charts with the structure of the UN and the UNODC systems and one Security Council Resolution.

## **D. Methodology**

This chapter contains the methods and techniques of investigation used for this present thesis. For the process of investigation, especially in political science, it is very important to prove the intersubjectivity of the aim of the investigation.

First, this thesis aims to analyze and mention the measures taken by the United Nations in order to prevent terrorism. Among others, the Terrorism Prevention Branch will be analyzed closely as it is a special element in the fight against terrorism. Decisive in this paper is the work of the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime, as well as, to try to define terrorism. The principal question in this work will be how the UN succeeds to targeting terrorism. The author wants to prove that the possible answer is that through TPB they reach this goal on an international level.

The method of investigation used is empirically analytical. The basis for this investigation is focused on the numerous literature about terrorism prevention within the UN. Therefore, the perfect method of investigation is the secondary analysis. The technique of investigation is a method of interpretation based on text analysis. The secondary analysis focuses on a new interpretation of data already known. In political science this analysis is very common, because it saves time and money.<sup>5</sup> The author uses this method to prove how the measures of the United Nations prevent terrorism and if the Terrorism Prevention Branch is the appropriate instrument of the UN in the fight against terrorism. Furthermore, this thesis is based on a qualitative investigation which asks how the UN is able to prevent terrorism.

The hypotheses used are part of a generalized investigation and they are subject to criteria of some important elements: Falsifiability, demanding generality and coherences, verifiability and prognosis.<sup>6</sup> This form of investigation is characterized by reaching a generalization for subsequent investigations.<sup>7</sup>

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<sup>5</sup> cp. Heinrich 1989, p. 73

<sup>6</sup> cp. Schmidt, 1994, p. 169

<sup>7</sup> cp. Nohlen, 1994, p. 129

Hypotheses are instruments that answer the principal questions asked in an investigation and they are linked to the theory used. They influence the process of investigation, make it provable and either approve or disprove the objectives of the investigation. There are different ways of using hypotheses.<sup>8</sup> The author of this present thesis chose the “Generated Method (Generierende Methode)” of using hypotheses. Therefore, the theses and hypotheses mentioned below will be the key point of this work. In the main parts of the investigation the author tries to prove or disprove the hypotheses. In the conclusion the main focus is to prove true the hypothesis that the Terrorism Prevention Branch is the appropriate instrument of the United Nations to find suitable sanctions in order to prevent terrorism within the international community.

The hypotheses used should prove the statements mentioned accurate:

The central theses:

- Terrorism has increased because of the failure of international sanctions of States.
- The efforts of the United Nations on counter-terrorism lead the UN into the international terrorism target.
- A general agreed definition of terrorism leads to more effective law enforcement within the international community.

The central hypotheses of this work:

- If an increase of international sanctions against terrorism were intensified then a more effective prosecution would be possible. This hypothesis is also relevant on a national level.
- If States were internationally linked on counter-terrorism matters, then a more successful combat against international terrorism would be possible.
- If an objective definition of terrorism were found, then it would be more effective to prevent and curb terrorist acts.

To explain the theses and hypotheses it is first important to know what the main part of the thesis will be. The basis for this paper will be the work of the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime. In particular, the 16 Conventions and Protocols of the United Nations as well as terrorism related Security Council Resolutions, General Assembly Resolutions and other relevant Strategies and Reports of the United

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<sup>8</sup> cp. Schmidt, 1994, p. 168f

Nations are very important. These are some sanctions the UN is providing in order to fight against international terrorism. Therefore, one thesis is about the failure of international sanctions of States. Member States should implement the 16 Terrorism Prevention Branch's Conventions and Protocols. Of course, this is not an easy issue, but an important one. Another thesis says that the UN is one target of international terrorism because of its work against terrorism. The third and probably the most important thesis is about the definition of terrorism. Law enforcement within the international community is problematic; a general agreed definition of terrorism would help to make law enforcement more effective.

The central hypotheses mentioned also point out to the importance of implementing the UN legal instruments in order to achieve a more effective prosecution. The UN is a key player in international law and therefore the role of international law in counter-terrorism will be described. Furthermore, it is important to harmonize international criminal law because this would also lead to a more effective and successful fight against terrorism. The UN provides different instruments and sanctions to the international community in the fight against terrorism. The author tries to prove that TPB is the best element of the United Nations to combat terrorism.

There are two methods possible to describe how the UN is handling terrorism prevention, the descriptive or interpretative approach. For this thesis the interpretative approach has been chosen because arising problems can be explained through yet existing theories. An inductive investigation requires a common asked question, an operationalization of the investigated elements and answers to that question through the hypotheses.<sup>9</sup> The preferred form of a qualitative method is of inductive design.

Another interpretative part of this thesis will be some practical aspects about the practical work of the Terrorism Prevention Branch. TPB is using this form of investigation as an instrument during the practical aspects part. The example presented is concerning a conference of the Terrorism Prevention Branch which was organized and hosted in Vienna at the beginning of February 2008. The purpose of the first initial Expert Group Meeting was to begin a process of elaborating a Digest of Terrorist Cases for Practitioners. The idea was to bring together 21 internationally recognized high-level experts from relevant countries affected by acts of terrorism.

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<sup>9</sup> cp. Bürklin/Welze 1996l, p. 381

Institutionalism will be the main theory used in this thesis, but it also addresses the international relation theories in general because the UN has changed over the years from an idealistic based organization into a more institutionalized based one.

The author proves or disproves the mentioned hypotheses and theses in the conclusion of this work. The hypotheses mentioned are the key point of this work and should prove that the United Nations can fight terrorism with the Terrorism Prevention Branch. The problems and the difficulties that could arise will be analyzed through the methods already mentioned.

## **II. Theory**

### **A. The theoretical implications of the United Nations' international legal personality**

The UN today is an organization of sovereign States which aims to fulfill the purpose of protecting themselves and each other from different threats. It has existed for more than 50 years and has provided the world with many different solutions. The United Nations in the 21<sup>st</sup> century is facing unexpected problems, such as new challenges and new kinds of warfare, poverty, diseases, etc.<sup>10</sup>

The role of the UN challenges the adjustment of the Member States and therefore it is important for the UN to move forward. Nowadays, we are dependent on other States; no State can fight problems such as terrorism on their own. The UN has to be more relevant, focused and efficient.<sup>11</sup>

The principal goals of the UN are to prevent threats before they take place, to help States improve their capacity to deal with international threats, and to find a way to work together and respond to these threats. As for terrorism, the UN Member States have not been able to agree on a definition of terrorism. Terrorism is a threat to the rule of law and universal human rights. All of the UN organisms need to be changed. Both the Security Council and the Secretariat have to be strengthened. The General Assembly has to be more focused on one issue and the Security Council has to be more active. The security threats we are now facing, go beyond one States aggression. It is a threat to human security of all States. The United Nations was created to protect fundamental human rights and to provide more freedom through collective security. Member States have to respect the UN Charter. Collective Security has 3 pillars in the UN system: no State can fight today's threats on its own; today's threats are not national, but rather international; States have the responsibility to protect their people and not harm other States.<sup>12</sup> Today's threats can be: economic or social, for instance poverty, infectious disease, inter-State conflict, internal conflict such as civil war, nuclear, radiological or biological warfare, terrorism and transnational organized crime. Article 51, Chapter VII of the UN Charter, permits us to take legal action by the use of force or self-defence to fight the threats but not that we have to. The UN wasn't created as a

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<sup>10</sup> cp. Baltz 1998, p. 76ff

<sup>11</sup> cp. Guido de Marco/Michael Bartolo 1997, p. vii

<sup>12</sup> cp. A more secure world 2004, p. 1 of the Synopsis



utopian organization. The UN and its organisms will only be as strong as its Member States.<sup>13</sup>

## **1. Historical overview of the role of the UN now and then**

The founding of the League of Nations in 1919, The First Parliament of Man<sup>14</sup>, was the answer to better relationships between States. States signed the Charter of the League because it only had 26 Articles and was not entirely confined to domestic sovereignty. The Charter was designed to ensure international peace and security. In the 18<sup>th</sup> and 19<sup>th</sup> centuries States had absolute sovereignty.<sup>15</sup> It was the inability of the States to create a collective security system that led the League of Nations to fail. The League was successful economically and socially.<sup>16</sup> The US never joined the League of Nations, and Germany and Italy withdrew in 1933 and 1938.<sup>17</sup> In the 1930's the "Commission to Study the Organization of Peace", was established and its aim was to continue the League of Nations.

After the Second World War the world needed a new world order. The bad experiences left by the two World Wars was the main reason for the creation of the United Nations. The US President Franklin D. Roosevelt and British Prime Minister Winston Churchill, took steps to create the United Nations. Its creation was to avoid the horrors of another world war and to establish a new world order.<sup>18</sup> There are three main reasons why a collective security system was established: Egoism of the great powers, interpretation of recent history and the worries about the future.<sup>19</sup> On 1<sup>st</sup> January of 1942, 26 States signed the "Declaration of the United Nations" in Washington. Another important conference was "Bretton Woods" in 1944, and 44 States decided to incorporate the World Bank and the International Monetary Fund. Not only was it important to provide the world with international security after the two World Wars, but also very important to strengthen the international economy. The ideology that war starts in the heads of people made a better understanding of different cultures a must to avoid cultural wars.<sup>20</sup>

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<sup>13</sup> cp. A more secure world 2004, p. 2ff of the Synopsis

<sup>14</sup> cited Kennedy 2007, p. 41

<sup>15</sup> cp. Ebock 2000, p. 88

<sup>16</sup> cp. De Marco 1997, p. 17

<sup>17</sup> cp. Wolf 2005, p. 13f

<sup>18</sup> cp. A more secure world 2004, p. 10

<sup>19</sup> cp. Kennedy 2007, p. 45

<sup>20</sup> cp. Kennedy 2007, p. 51f

The United Nations was created at the conference in San Francisco between the 25<sup>th</sup> of April and the 26<sup>th</sup> of June in 1945, attended by 50 States. In its first 30 years, several new States emerged from the former colonial system. As the number of States increased, the number of internal conflicts also increased. Today the UN has 192 Member States. In the 1980's the new States had problems with their capacity and legitimacy which led to the rise of internal wars. See table of the development on internal wars below:<sup>21</sup>

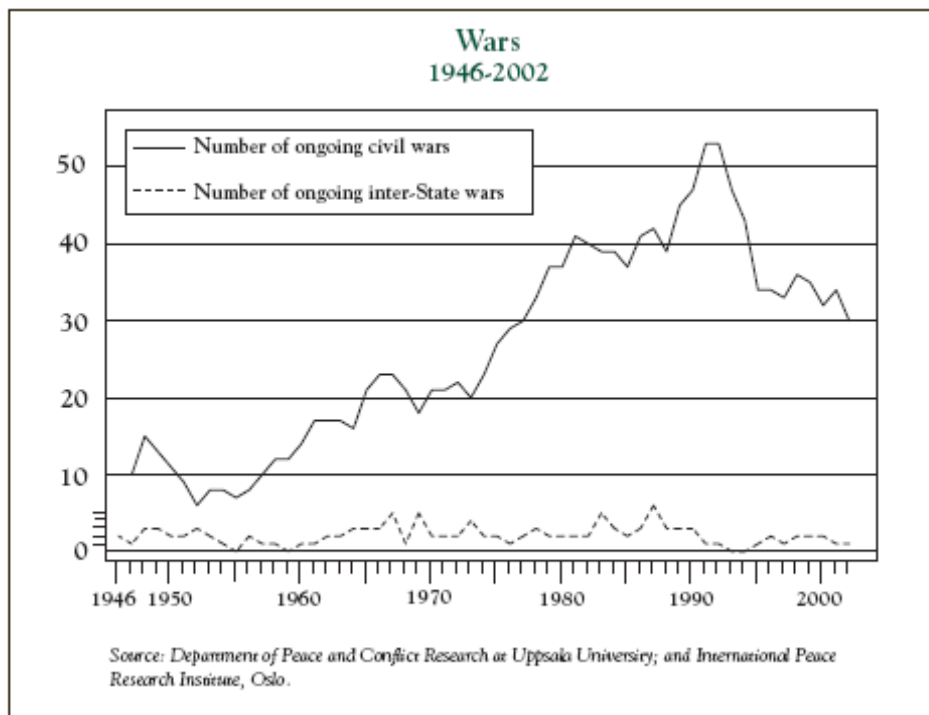


fig. 1

The competence of the Security Council, the veto rule and international jurisdiction have been the main discussion points since the beginning of the UN. They reached an agreement that five military powers had to act as global police. These five military powers are made up of the two most important allies: the USA and Great Britain, China, Russia and France.<sup>22</sup> The most frightening point is that, in fact, these five Permanent Members can make the Security Council incapable of taking action if they so wish.<sup>23</sup> Therefore, the great powers can decide between war and peace. But Article 99 of the UN Charter, "*The Secretary General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security*,"<sup>24</sup> is a very interesting point, because it tells us that besides the Security Council and the General Assembly, the Secretary General can

<sup>21</sup> cp. A more secure world, p. 11

<sup>22</sup> cp. Wolf 2005, p. 14ff

<sup>23</sup> cp. Kennedy 2007, p. 71f

<sup>24</sup> cited Article 99 of the UN Charter

act as a cushion between the great powers.<sup>25</sup> But as Kennedy points out, a great power is able to override the resolutions made in the world organization and can act alone even if it is against the UN Charter.<sup>26</sup> The Member States are liable to allocate their military resources to the Security Council. In addition to the Permanent Five, they agreed to increase the Security Council with 10 other Members of the UN as non Permanent Members of the Security Council without the right of veto. The veto rule is mentioned in the UN Charter, which can be seen as the power behind war. The UN Charter was a commitment between the universal rule of law and requirements of post-war politics. The great powers since 1945 are the Permanent Five Members of the Security Council. The general principle of the UN is international law. The Security Council is the most powerful instrument within the UN because it decides which measures should be undertaken. This is an explanation why the UN was paralyzed during the Cold War.<sup>27</sup> The Security Council has to act on behalf of the whole organization; the Member States have to accept its decisions.<sup>28</sup> The UN Charter can also be seen as the constitution of the world. It includes Chapters and Articles concerning the rights of the General Assembly, the Security Council, Membership, the purpose of the United Nations, settlement of disputes, action with respect to threats to peace, breaches of the peace, and acts of aggression, regional arrangements, international economic and social cooperation, Economic and Social Council, Declaration regarding non-self-governing territories, international trusteeship system, the Trusteeship Council, the International Court of Justice, the Secretariat, miscellaneous provisions, transnational security arrangements, amendments and ratification.<sup>29</sup>

After the implementation of the UN Charter, the Security Council's intention was to put the carefully written UN Charter into practice. The first goal of the creators of the UN was to put an Article (Article 2) into the UN Charter to secure the willingness of the Member States to act and to fulfill the obligations demanded by the Charter.<sup>30</sup> The experiences of the Cold War posed a challenge for the Security Council. The veto rule of the Permanent Five gave rise to many problems for the young UN. When a Member of the Permanent Five makes use of its veto rule, than the other States have to accept it. In fact, through vetos in the Security Council, it was soon realized that the UN didn't have the strength it needed since the very beginning. Therefore, Institutionalism demanded the use of the veto rule only in cases of peace and war.<sup>31</sup> Chapter VII of the UN Charter is about "*Action with respect to threats to the*

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<sup>25</sup> cp. Kennedy 2007, p. 65f

<sup>26</sup> cp. Kennedy 2007, p. 49

<sup>27</sup> cp. Köchler 2003, p. 321

<sup>28</sup> cp. James Alan M. 1988, p. 76

<sup>29</sup> see UN Charter

<sup>30</sup> cited De Marco 1997, p. 20

<sup>31</sup> cp. Kennedy 2007, p. 72f

*peace, breaches of the peace and acts of aggression*"<sup>32</sup> The first crisis was, as pointed out, at the beginning of the Cold War through the lack of consensus of the Permanent Five. During the East-West Conflict and the emersion of a bipolar world order in the 1980s, the UN wasn't able to avoid the creation of international resolutions related to the consensus in the Security Council. Because of all these problems provoked by the Cold War, the Western powers launched the NATO (North Atlantic Treaty Organization) and the Soviet Union, the Warsaw Pact.<sup>33</sup> The UN wasn't living up to its expectations of 1945. During the war in Korea in 1952, the Security Council responded for the first time with military armed forces under the UN flag. But other examples such as the Suez Crisis in 1956 (the first major peace keeping operation), the Hungarian Revolution in 1956 or the Congo Crisis in 1960, were setbacks for the Security Council.<sup>34</sup> In the UN's first 10 years, the impact the US made was great.<sup>35</sup> As the UN grew the involvement of the US in the General Assembly decreased. With the peace keeping operation in the Suez Crisis and after the Cold War the UN had grown. Therefore, after the Cold War the UN was more important.<sup>36</sup> Other peace keeping missions followed and the UN's action in political security increased.<sup>37</sup> In the 1970's, 80's and 90's the UN experienced ups (with peace keeping missions) and downs, but wasn't able to guide the world into peace as was expected after the Cold War. In 1989 there was only one superpower left, which held the supremacy in the Security Council. There was also an opportunity after the Cold War for collective security measures. For example, when the Security Council authorized the use of force in Iraq.<sup>38</sup> The unipolar power made the Gulf War resolution possible in 1990/1991; it is based on the Chapter VII. The NATO attack in Kosovo in 1999 has also been legitimized by the use of force under Chapter VII. From the point of view of the international rule of law, this unipolar power has its advantages in the UN organization as it makes it more effective, due to the lack of opposition of the Security Council on important matters. But there is also one big disadvantage concerning the veto rule of the Permanent Members of the Security Council, which gives them the power to execute in the interest of the only superpower and according to Chapter VII of the UN Charter. The Security Council is also able to create ad hoc crimes tribunals under Chapter VII (which is of course influenced by the hegemonial powers in the SC); It is important not to ignore *jus cogens*<sup>39</sup>, basic human rights.<sup>40</sup> Köchler points out that we have to see that intergovernmental organizations (like the UN) *can only be exercised in the legal framework of*

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<sup>32</sup> see UN Charter, Chapter VII

<sup>33</sup> cp. Wolf 2005, p. 32

<sup>34</sup> cp. Wolf 2005, p. 34f

<sup>35</sup> cp. Wolf 2005, p. 36

<sup>36</sup> cp. De Marco 1997, p. 14

<sup>37</sup> cp. Wolf 2005, p. 39

<sup>38</sup> cp. A more secure world 2004, p. 12f

<sup>39</sup> part of international law which has to be respected in order of rule of law principles

<sup>40</sup> cp. Köchler 2003, p. 325

*the leading power's considerations.*<sup>41</sup> The current situation of the Security Council can be seen as imbalanced.<sup>42</sup>

The way in which the UN functions today, doesn't comply totally with its original ideals. The UN is supposed to address problems before they become problems. International peace and security should be seen as part of a guarantee and the UN is supposed to handle domestic affairs when national institutions are about to collapse. The UN should intervene as a collective security body to ensure peace for the international community.<sup>43</sup> But with the attacks of September 11<sup>th</sup>, it was clear that this collective security failed. The Security Council Resolution 1368 in 2001 gave the United States the right of self-defence against the Taliban regime. The technological revolution has made the world a more insecure place. *A threat to one is a threat to all States.*<sup>44</sup>

Today, the UN has developed into an international body that provides, among other things, and as its main element, peace keeping missions (not mentioned in the UN Charter) all over the world. The founders of the UN believed in this organization so as to avoid war and strengthen international cooperation within States.<sup>45</sup> Now it has to handle not only more problems, but also different kinds of problems such as international terrorism, internal armed conflicts, global warming, deathly diseases (AIDS), etc. Without the existence of the UN the years after 1945 would have been a lot bloodier than they were.<sup>46</sup> The UN has to reform in order to strengthen international cooperation and effectiveness to fight international terrorism. The collective security system has to be more effective in order to fight international threats like terrorism. The necessary reforms needed are, for example, the expansion of the Security Council, more control of the Security Council through other organisms of the UN?<sup>47</sup> To achieve international peace and security the UN needs to reform but it is not totally clear how to go about it.

## **2. The idea of international relation theories in the UN system**

The main international relation theories are idealism, institutionalism and realism. The most common adherent of idealism would be Immanuel Kant, with his philosophical draft of a peaceful world – “Zum ewigen Frieden (Perpetual Peace).” The ideal of the UN was based

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<sup>41</sup> cited Köchler 2003, p. 329

<sup>42</sup> cp. Köchler 2003, p. 322

<sup>43</sup> cp. De Marco 1997, p. 22

<sup>44</sup> cp. A more secure world, p. 13f

<sup>45</sup> cp. Wolf 2005, p. 68f

<sup>46</sup> cp. A more secure world, p. 12

<sup>47</sup> cp. Wolf 2005, p. 119

on an ideological approach to protect people from war and ensure peace. Kant is one of the best known ideologists as he tried to answer a commonly asked question in international politics, how to avoid war and ensure peace. His answer is based on the democratic constitution which guarantees peace. The decision making process in democratic States is used as an instrument for a peaceful solution in case two democratic States are having internal conflicts. During the East-West Conflict and the bipolar world order, another approach emerged, which takes a counter position to Kant's Ideology. Realism assumes that the world is anarchical and that no hegemonial power is ruling the sovereign States. Therefore, security of a State can only be guaranteed by self-defence. The realistic idea is that the world is dominated by cruelty and peace is not what the world should aim for, it is security. Instead of being a peace policy it is a security policy.<sup>48</sup> In realistic analysis of international politics, social actors or internal differences within States are not included. International organizations, from the point of view of realism, are not able to achieve a structural change in international politics. Realism believes that Power States use international organizations to improve their power and their interests. The establishment of an international organization depends on a State with hegemonial character.<sup>49</sup> The UN has changed over the years from an ideological based organization to a more institutionalized organization. Currently, the United Nations is part of the structure of neo-institutionalism.

Just like realism, institutionalism describes the international system as anarchic. Unlike realism, institutionalism believes that States can fulfill their interests better through international cooperation.<sup>50</sup> Contrary to realism and institutionalism we have idealism. Normative idealism is in radical contrast to realism. The idea of idealism used today is the social-constructivism.<sup>51</sup>

Hegemonial theories constitute one form of the realism theory. The problem of realistic politics is that States provoke insecurity between each other by seeking more effective armament for their States. Another paradigm of international relation theories would be institutionalism. The main point of this theory is that international cooperation can be achieved when each State is able to take advantage of the international cooperation for their self-defence. But what is important here is that confidence in self-defence or in the hegemonial power doesn't give us more security, it also provokes war.<sup>52</sup> The international relation theories have different concepts as to the definition of "international relations". For

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<sup>48</sup> cp. Menzel 2001, p. 7ff

<sup>49</sup> cp. Rittberger/Zangl 2003, p. 35f

<sup>50</sup> cp. Rittberger/Zangl 2003, p. 38

<sup>51</sup> cp. Rittberger/Zangl 2003, p. 43f

<sup>52</sup> cp. Menzel 2001, p. 18f

example, for realists this notion would be International Politics, for idealists it would be World Politics, for institutionalists it would be World Order Politics or new Global Governance.<sup>53</sup>

In hegemonial world orders there is the idea that States are in balance of power, but no World State, such as the UN, which could provide a long term world order, exists. Idealism believes in the good will of the people, in their intelligence and should lead us into a better world. Conflicts are compensated by compromise. Perpetual peace, property of the States and universal human rights can be achieved. Problems and conflicts in idealism can be solved by the use of rational action. This is very different from realism, because people are not only good, but also bad, not only intelligent but also motivated by biological instincts. More effective in realism is the principle of self-defence. Security can be achieved through armament and through a balance of politics and peace; it's usually in a situation of "non war". In case one State accumulates power and becomes the only dominance or hegemony, the problem of armament would be solved. Institutionalism is between idealism and realism. Cooperation between States is possible when it is realistic rather than idealistic. Institutions based on peace and human rights are successful in momentum. Structuralism is also found between idealism and realism because its approach is materially focused. The international system is based on the disparity of power and prosperity and through this war, colonialism and imperialism also. International cooperation is only possible when the disparity is abolished and the world has to be more equitable. In the idea of structuralism, war isn't forbidden.<sup>54</sup>

The first modern structure of States was established in 1648 in the "Westphalia Structure of States" which has the following basic principles. Principle of Territory: States have their own limited territories in which each State can use its power. Principle of Sovereignty: States are the only participants in international systems. No power is more superior than State power. Principle of Legality: Sovereign States are equal and their relation to each other set by treaties and international law, on a voluntary basis. Nothing affects the *ius ad bellum*, the right of war.<sup>55</sup> "Ius ad bellum" is considered as the right of sovereign States. Clausewitz "Si vis pacem, para bellum" (If you want peace, prepare war!).<sup>56</sup> The institutionalized model of Hugo Grotius aims to convert "ius ad bellum", right of war into "ius in bello", legal regulation of war.<sup>57</sup> Other important adherents of idealism were John Locke and Immanuel Kant. Idea of Idealism: *"Überwindung des Naturzustandes der Völker, also der Anarchieproblematik des internationalen Systems, soll durch Aufklärung, Friedenserziehung, republikanische*

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<sup>53</sup> cited Menzel 2001, pl 20

<sup>54</sup> cp. Menzel 2001, p. 21ff

<sup>55</sup> cp. Menzel 2001, p. 25f

<sup>56</sup> cited Menzel 2001, p. 28 after Clausewitz

<sup>57</sup> cp. Menzel 2001, p. 29ff

*Verfassungen und deren Kooperation, durch die Vereinigten Staaten von Amerika bzw. Europa oder durch einen Friedens- bzw. Völkerbund erfolgen“.*<sup>58</sup> Idealistic ideas aim for peace by preparing for peace.

Realism was the justification for imperialism before the World War. In contrast, Idealism aims for peace by pacifistic peace movements. Structuralism criticizes imperialism and Institutionalism seeks international law in order to preserve world peace. Woodrow Wilson's 14 points are the idealistic answers in preventing another war. Another answer of idealism was the establishment of the League of Nations.<sup>59</sup>

In the 1950s the conflict with the methods of international relations led to the use of the prefix “neo”. Institutionalism reappeared with the creation of the League of Nations. However, the beginning of the East-West Conflict overshadowed idealism and helped realism to re-emerge. At the end of the Second World War and the establishment of the United Nations, idealistic ideas returned. With this, we see that the two real paradigms for international relations are idealism and realism. Through the years there have been great differences between those theories. Neorealism is a little different from classic realism, for example neorealism doesn't believe anymore in human nature to reach power, it's the international system itself. The survival of a State can only be guaranteed if this State reaches for power. But as the classic realism argues, international organizations are not important. International cooperation in Neorealism is based on the fact that international organizations are only short lived because the benefits gained are for the community and not for just one State. International organizations can improve international cooperation if one State acts as a hegemonial power.<sup>60</sup> The beliefs of neo-institutionalism keep the structure of classic institutionalism, that international organizations become more important because of the increasing and complex problems in international politics.<sup>61</sup>

Neorealism, neo-institutionalism and Social-constructivism are contrary theories and today neorealism is in decline while the other two theories are on the up rise. That means also an increase in international organizations, such as EU, WTO, IWF or the UN that are in contrast to neo-realistic ideas.<sup>62</sup>

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<sup>58</sup> cited Menzel 2001, p. 30

<sup>59</sup> cp. Menzel 2001, p. 32

<sup>60</sup> cp. Rittberger/Zangl 2003, p. 36f

<sup>61</sup> cp. Rittberger/Zangl 2003, p. 40f

<sup>62</sup> cp. Rittberger/Zangl 2003, p. 47f



Institutionalism and structuralism are positions inbetween the two main paradigms. The UN is a collective transnational actor<sup>63</sup>, with an institutionalized concept. The idea of its establishment is ideologically motivated, but cooperation is realism based.

Politics is the management of power. Institutionalism is based on treaties, rules, other institutions, international law and international court of justice, in contrast to realism on power or idealism on natural norms or human rights.<sup>64</sup> It is the theory of a global community.<sup>65</sup> The UN Charter is therefore the product of Neoinstitutionalism.

Global Governance is another fact of idealism. Globalization is “...*kein Zustand, sondern ein Prozess der Vertiefung und Beschleunigung von grenzüberschreitenden Transaktionen bei deren gleichzeitiger räumlicher Ausdehnung...*”.<sup>66</sup> Globalisation for realism is the establishment of a world order on a hegemonial basis. Idealism is based on humanitarian intervention with universal principles and on human rights. Realism is more attractive for sovereignty of States than Universalism and therefore realism questions the UN system. Idealistic interventions are peace keeping operations.

The UN, for some people, acts as a world government. In fact, the role of the UN, as mentioned before, is far from acting as a world government. But why would the creation of a world government or a world State be important? Konstantin Baltz explains that it would be important in order to reach world peace. This is complicated because of the wide definition of peace. He understands this definition as “positive peace” which aims for the right of every human being to live in peace as an individual. Peace isn’t a separate element because individuals are dependent upon other individuals in an economic, social and legal way. In parts of the world where human rights are violated or people live in poverty and are in need of tangible goods, this definition of peace is not applicable. This is the reason behind civil wars. A world State could only be established in a democratic system. Since people became aware of their living space together with its boundaries and the limitations of national States and territories, there has been a need for a world confederation. New phenomenon such as international terrorism, drug trafficking and international organized crime are way out of national control because these new phenomenon are worldwide. Economy is also worldwide; the globalisation process is affecting the whole world in different areas. Telecommunication systems have reached a revolutionary stage. The creation of a world State is dependent on the various factors mentioned above. Further factors can be seen in recent history. At the

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<sup>63</sup> see Menzel 2001, p. 132

<sup>64</sup> cp. Menzel 2001, p. 85

<sup>65</sup> see Menzel 2001, p. 205

<sup>66</sup> cited Menzel 2001, p. 226

end of the Cold War the world was prepared for new international politics. Many people had hope and confidence in the newly established great powers and in a cooperation of world politics which were hoped to have been executed by the UN. The problem here is not clear whether to establish a world State before people are aware that they need it or wait until the majority of them know that they need it and seek its establishment. The willingness of such a world State or a world society depends on the people. The United States, the only great power left at the end of the Cold War had the ability to lead the UN in a new direction. But this is dangerous; Konstantin Baltz refers to his strategy using the Roman Empire as an example. At the end of the war, the Romans wanted to obtain peace but this peace was only for the romans – Pax Romana. A world society doesn't exist today because of a lack of awareness. Only some parts, such as the economy, is leading us into a world society. But of course this diminishes the sovereignty of national States and leads to an independence of States.<sup>67</sup>

The "One World" theory was established at the end of the Second World War. But during that time it was not possible to achieve such a world because of the creation of national States. Other reasons why "One World" couldn't be achieved was because of the Cold War and the East-West Conflict. The idea of "One World" isn't new but it is still an ideal. The creation of a world State today is unlikely but the idea itself is not completely utopian.<sup>68</sup>

A world government always has to be established in a democratic system which should never degenerate into a dictatorship or an autarchy of only one State. Such a world government has to be built on the principles of power sharing, and a separation of powers and the existence of a world constitution in order to prevent dictatorship. Such a world State should be organized like a global federal State. The results that could be achieved by establishing such a world State are greater than the risks. But of course, this is only a theoretical idea and in practice such an idea would encounter major consensus.<sup>69</sup>

Some think that establishing a world State would be the end of history because political aims would have been achieved and there would be nothing left to aim for. Perfection would have been reached. But on the other hand, there will always be a point in which the world State is obsolete and new aims have to be achieved.

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<sup>67</sup> cp. Baltz 1998, p. 133ff

<sup>68</sup> cp. Baltz 1998, p. 140ff

<sup>69</sup> cp. Baltz 1998, p. 143f

As Kant said, perpetual peace can not be achieved over night; it is a hard work, not an abstract idea, that has to be solved constantly to reach its goal.<sup>70</sup>

Supranationality, the opposite of sovereignty, makes it very sensitive in international relations. It usually refers to organizations of people that have the power over States. It also can be seen as a characterization of the international decision-making processes. In a legal definition it refers to a decision of a supranational authority to which the States are bound under its power. In fact, the result of decision-making is more important than the process itself. Of course, States have to engage in those kinds of supranationalities. The role of international non-State actors *“is to provide the general public independent information about the issues themselves [...] and about the process of decision-making.”*<sup>71</sup> The role of international organizations is more independent than the role of non-State actors. The UN is such a supranational international organization.<sup>72</sup>

Another point, about the role of the UN was made by Rittberger/Mogler/Zangl. They ask if the more powerful Member States (Permanent Five) are blocking the active role of the UN, because of their fear of losing influence and political autonomy.<sup>73</sup> Furthermore, the question arises if the UN is capable of reaching the point of being a world government and able to manage international anarchy.<sup>74</sup> Anarchy meaning here, the different forms of action of the States, so as not to lose their self-control, because only through identifying themselves and being different from others, States are able to coexist within a society of States. Threats of punishment are important for people in societies to suppress their violent conduct. Conduct in conflictive situations is necessary for civilizing society. Norbert Elias gives three mechanisms which could be considered for the role of the United Nations in civilizing in international relations: 1. civilization based on private monopoly, 2. public monopoly and 3. self-control of the States. As for point one, the UN can be seen as an instrument of a hegemonial power. In point two, the UN is an upcoming supranational authority and in point three, the UN constitutes a global system of negotiation. These mechanisms mentioned are the ideals. In the following chapters we can see if and how much these ideals are put into practice. But it can be said that the UN, as an actor of all these mechanisms, contributes to civilizing international relations.<sup>75</sup> During the East-West Conflict the role of the UN in international politics was the role of a global system of negotiations. Since the end of the East-West Conflict, the UN was used as an instrument of hegemonial powers to solve in

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<sup>70</sup> cp. Baltz 1998, p. 148ff

<sup>71</sup> cited Brus 1995, p. 200

<sup>72</sup> cp. Brus 1995, p. 196ff

<sup>73</sup> cp. Rittberger/Mogler/Zangl 1997, p. 7

<sup>74</sup> cp. Rittberger/Mogler/Zangl 1997, p. 15

<sup>75</sup> cp. Rittberger/Mogler/Zangl 1997, p. 16ff and 101f

violent conflicts collectively. The role of the UN as a World State actor is important in international relations.<sup>76</sup>

One critical point was that after the Cold War, international institutions were promoting world peace. The power of the institutions in Europe, such as the European Community (EC), are extensive and well developed. But institutions “*push States away from war and promote peace*”<sup>77</sup>. Institutional theories are a response to realism. The opinion of the realists is that institutions are “*a reflection of the distribution of power in the world*”<sup>78</sup>. Institutionalism argues that institutions can increase the States preferences and are able to change the State behaviour. Realism believes that institutions are not important for peace. Realism sees war inevitable and there is no distinguishing between good or bad States. Institutionalism has a different argument on how institutions work to change State behaviour. Liberal Institutionalism is not directly answering the question whether institutions cause peace or not. It is more focused on the cooperation of the States interests if they are conflictive. Another critical point is the collective security theory, because it is dealing with how to obtain peace. Mearsheimer points out that “*the key to stability, this world of armed States, is the proper management of military power*”<sup>79</sup>. In the theory of collective security institutions are the key to the management of the power of States. One aspect of this theory which is actually working is peacekeeping.<sup>80</sup> The critical theory aims to change the international system into a world society. States in that system would be guided by norms of cooperation and trust. War and security are the two main elements which have to be regulated in order to achieve a system of peace. Critical theories try to undermine the dominant role of realism in international politics, and in fact they are against predicting the future of international politics because it is not possible. The world they want to create is one in which States consider war as unacceptable. The false promise made by international theories is that they promote international peace. In fact, the world doesn't work the way these theories say but they influence decision making-processes and the world policy. Their influence is limited only by State behaviour. The critical points of the institutionalism theories are that these theories don't describe the world, they are influencing States and leading them in a false direction and they show that beliefs in institutions are false and that they have mattered little in the past.<sup>81</sup>

In contrast to the false promise of international institutions, the promise of institutional theories is characterized by sustained cooperation. Institutions in this case are necessary but

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<sup>76</sup> cp. Rittberger/Mogler/Zangl 1997, p. 102ff

<sup>77</sup> cited Mearsheimer, 1999, p. 331

<sup>78</sup> cited Mearsheimer, 1999, p. 331

<sup>79</sup> cited Mearsheimer, 1999, p. 355

<sup>80</sup> cp. Mearsheimer, 1999, p. 332ff

<sup>81</sup> cp. Mearsheimer 1999, p. 368ff

not always valuable. Mearsheimers critical opinion on international institutes is only valuable if States expect too much from them.<sup>82</sup> He also describes collective security as “*balancing and the aggregation of military forces against threats to peace*”<sup>83</sup>. This is how collective security promotes peace. Kupchans criticizes Mearsheimers criticism about institutions because he “*ignores the extent to which domestic politics, beliefs and norms shape State behaviour*”.<sup>84</sup> Mearsheimers opinion is based on structural realism. In fact, collective security plays an important role in promoting peace and security.<sup>85</sup>

## B. Terrorism Prevention in General

What used to be a small field of study has become a centre for political developments. Terrorism provoked multidisciplinary studies to work in the same field<sup>86</sup> (political science, law, history, sociology, criminology, psychology, communication and military).<sup>87</sup>

Terrorist attacks threaten human rights and rule of law principles, two valuable points of the UN Charter. Terrorist groups or organizations are threats to Member States as well as to the UN itself, as the UN, through its counter-terrorism measures, is one of the terrorist's enemies. Within the United Nations a comprehensive counter-terrorism strategy is required to fight against terrorism.<sup>88</sup> The first General Assembly Resolution was adopted in 1946 and was on disarmament of weapons of mass destruction.<sup>89</sup> So, the UN has been facing international threats since the very beginning. The End of the Cold War, as mentioned before, didn't bring an end to terrorism. On the contrary it destabilized this phenomenon, and above all, religious terrorism and State-terrorism. What we have to fear nowadays is a possible use of weapons of mass destruction. We need an effective policy from Member States to combat this phenomenon. Some States use terrorism as a cheap form of warfare because they use terrorists to achieve their political aims. The first modern terrorist act took place in 1968, as three armed Palestinian terrorists of the PFLP<sup>90</sup> hijacked an Israeli plane on its way from Rome to Tel Aviv. This was the first time that the act was politically motivated.<sup>91</sup> Since then it has been clear, that terrorism has gone international. The PLO

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<sup>82</sup> cp. Keohan/Marin 1999, p. 395f

<sup>83</sup> cited Kupchan Charles and Clifford, 1999, p. 397

<sup>84</sup> cited Kupchan Charles and Clifford, 1999, p. 397

<sup>85</sup> cp. Kupchan Charles and Clifford, 1999, p. 397

<sup>86</sup> cp. Schmid/Jongman 1988, p. xiii

<sup>87</sup> cited Schmid/Jongman 1988, p. xiii

<sup>88</sup> cp. A more secure world 2004, p. 52

<sup>89</sup> cp. A more secure world 2004, p. 12

<sup>90</sup> Popular Front of the Liberation of Palestine

<sup>91</sup> cp. Hoffman 2006, 110ff

was the first international terrorist organization. Many terrorists from different terrorist organizations had been trained by the PLO. Religion plays an important role in terrorist groups and organizations, but in some terrorist groups, politics is a dominant factor, especially in the PLO or IRA.<sup>92</sup>

In general, terrorism is a planned activity of violence. Bruce Hoffman wrote down 5 key objectives of terrorism: Arousing attention (through acts of violence); Acknowledgement; Recognition (to obtain recognition of their rights); Authority (to change the government) and Governance (wanting to take control over a State).<sup>93</sup>

Hoffman wrote in 1998 that religious terrorism is on the up rise and that the future of terrorism could also include the use of weapons of mass destruction.<sup>94</sup>

The following chapters will provide us with how international law and international criminal law deal with terrorism. Furthermore, an insight on the form, concept and sources of terrorism will be discussed. In part III of this present paper, measures taken by the United Nations and its organisms on counter-terrorism will be listed, starting with one of the major problems - the definition of terrorism. The lack of agreement on a definition has stained the image of the UN.

## **1. Definition of terrorism**

### **a) “One man’s terrorist is another man’s freedom fighter” – The problem of defining terrorism**

Terrorism in general is definable, but in fact there is no objective, official definition about this phenomenon in international treaties. Manfred Schmidt defines terrorism in general as from the Latin word terror = fright.

*“eine Schreckensherrschaft, d.h. ein Herrschaftssystem, in dem mit systematischem Einsatz von Schrecken verbreitenden Mitteln, insb. Androhung und Anwendung physischer oder psychischer Gewalt regiert wird. Die politisch motivierte Kriminalität von Individuen, Gruppierungen und Organisation die [...] gegen Herrschaftsträger in Staat und Wirtschaft vorgehen. Der politisch motivierte Terrorismus ist in der Regel auf die Anwendung von Furcht und Schrecken erzeugenden Mitteln [...] gerichtet. Kennzeichnend für Terrorismus ist*

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<sup>92</sup> cp. Hoffman 1998, p. 84ff

<sup>93</sup> cp. Hoffman 1998, p. 183f

<sup>94</sup> cp. Hoffman 1998, p. 204f

*[...] eine Abschottung nach außen [...] dies geht einher mit der weitgehenden Trennung von Verselbständigung von der Gesellschaft, massivem gruppeninternen Moralismus und der Bestärkung des Glaubens der Mitglieder terroristischer Vereinigungen „and die erlösende Wirkung der Tat“ [...].<sup>95</sup>*

The Oxford Dictionary:

*“A system of terror; 1. Government by intimidation as directed and carried out by the party in power in France during the revolution of 1789-94; the system of Terror. 2. gen. A policy intended to strike with terror those against whom it is adopted; the employment of methods of intimidation; the fact of terrorizing or condition of being terrorized.”<sup>96</sup>*

The historical background of terrorism and the first time it was used in Europe was during the French Revolution. It comes from the “régime de la terreur” and it was an instrument of governance of revolutionary States.<sup>97</sup>

A very different idea of a definition of terrorism, which is of interest for this present paper, gives, “A more secure world” because it refers to the problem that the international community, within international treaties, is facing, to try to define terrorism as an objective, official definition, leading us to the prevention of terrorism. In the past the Member States of the UN failed to agree upon a general official definition. Since 1945 we have the UN Charter, the Geneva Conventions and the Rome Statute of the International Criminal Court. These treaties cover the use of force in war situations, regulate humanitarian principles on civilians and war prisoners and also the main paragraphs on international peace and security.<sup>98</sup> But there is great debate on how to define terrorism. There are more than a hundred different definitions of terrorism.<sup>99</sup> 1983 Alex Smith counted 109 definitions of terrorism.<sup>100</sup> Since then the number of definitions has for sure grown. For some people terrorism has already been defined and for others we still need to search for an official, objective definition of that notion. But there is still another group of people in this complex system of defining terrorism, who don't believe in a definition of terrorism: “it is not even worthwhile to try to define terrorism”<sup>101</sup> because of its complexity. Why a general agreed international definition is important to prevent terrorism and what the main problems of this failed agreement is, as well as a theoretical insight of the complex problem of defining terrorism, is contained in this chapter.

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<sup>95</sup> cited Schmidt Manfred, p. 956, Terrorismus

<sup>96</sup> cited Oxford Dictionary, Terrorism, cited Hoffman 1998, p. 14

<sup>97</sup> cp. Hoffman 1998, p. 15

<sup>98</sup> cp. A more secure World, 2004 <http://www.un.org/secureworld/report2.pdf>

<sup>99</sup> cp. Zimmer, 1998, p. 5

<sup>100</sup> cited Schmid Alex 1983: Political Terrorism pp. 119-152, cited Van Krieken 2002, p. 14

<sup>101</sup> cited Herbst 2003, p. 163

## **b) Freedom Fighters<sup>102</sup> vs. Terrorists – A controversy discussion of a definition of terrorism**

We have dealt with the notion of terrorism since the Second World War. For a long time it was insisted that no treaty could be adopted to ban terrorism. Third world countries saw that notion as acts of “freedom fighters”. The first definition of private or individual terrorism<sup>103</sup> was created in the International Convention to Prevent and Punish Terrorism in 1937 from the League of Nations, which led to a general consensus but it failed because of the Second World War and the decolonization movement. Of course, this Convention never went into force. The “freedom fighters” provoked acts of violence against the colonialist regimes. Their actions were very close to the definition created in this convention on terrorism. But the militant political support in the Cold War led to a *political gridlock*<sup>104</sup>.

Scholars and Diplomats agree that currently there is not a definition of terrorism. Cassese mentions that it is impossible to criminalize terrorism, but at present there are some treaties which consider only specific instances of terrorism. For example, some UN Conventions and Protocols (see part III of this paper), hijackings of aircrafts, terrorist acts against internationally protected persons including diplomatic agents, the taking of hostages, etc.<sup>105</sup> Terrorism is not a discrete crime under international law (see part II, chapter C of this paper), but as Cassese points out, a definition of terrorism does exist and it is also a crime under customary international law. In his opinion, after 1937, a definition of terrorism has emerged in the international community including an exclusion of the acts or transactions of “freedom fighters”, which are national liberation movements. But this exception hasn’t been accepted by most of the third world countries because the action taken by freedom fighters was self determined. Therefore, it was hard to find a general agreement on the definition of terrorism because the legitimate exception of terrorists were the freedom fighters. The international community gave up looking for a universal definition of this term, but agreed on extraterritorial jurisdiction in terrorist cases. The UN started then to establish international conventions concerning the hijackings of airplanes, terrorist bombings, financing of terrorists, nuclear terrorism, etc. (see part III, chapter A, 1 of this present paper). The term terrorism in these conventions doesn’t reflect a general definition. With the appearance of colonial regimes the international community still has to fight, among other things, with the term “freedom fighters” but the Arab Convention for the Suppression of Terrorism in 1998, the

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<sup>102</sup> “Freedom Fighters”: individuals or groups fighting for their right of self-determination

<sup>103</sup> mostly terrorist groups or Organizations

<sup>104</sup> cp. Weigend, p. 919

<sup>105</sup> cp, Cassese 2003, p. 120, see further universal legal instruments, part III, chapter A, 1 of this present paper



Anti-terrorism instruments adopted by Arab States and some African Unities, exclude acts made by “freedom fighters” as terrorism.<sup>106</sup> In fact, it refers to struggles for self determination of the liberation movements.<sup>107</sup>

### **c) Lack of definition of terrorism in international treaties**

In general terrorism has been defined but no agreement on the exception of acts of the “freedom fighters” has been reached. In some international treaties terrorism is prohibited but not defined or qualified. For example in Article 4 of the Statute of the International Criminal Tribunal for Rwanda “*acts of Terrorism*” or “*acts of terrorists*” are prohibited but there is no specific definition.

In the 1999, United Nations Security General Assembly - International Convention for the Suppression of the Financing of Terrorism (GA resolution 54/109 of 9 December 1999), Terrorism is defined in Article 2(a) referring to nine other UN treaties (universal legal instruments; see part III, chapter A, 1) and in Article 2(1) (b), as:

*“Any...act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing an act.”*<sup>108</sup>

This definition is closest in meaning to a generally agreed definition and for Frowein it is very interesting, because it assumes that terrorists acts are politically motivated, therefore, terrorists are not considered to be normal criminals.

For the Supreme Court of Canada the above-mentioned definition of terrorism is essential for understanding what terrorism is. But it also says that Parliament can adopt more definitions of terrorism.

Article 33(1) of the Fourth Geneva Convention of 1949 says “*collective penalties and likewise all measures of intimidation or of terrorism are prohibited*”. The Second Additional Protocol of 1977 on internal armed conflicts mentions that “*acts of Terrorism are prohibited at any time and in any place whatsoever*”.<sup>109</sup>

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<sup>106</sup> cp. Weigend, p. 919ff

<sup>107</sup> cp. Cassese 2006, p. 951

<sup>108</sup> cit. Cassese 2003, p. 122

<sup>109</sup> cit. Cassese 2003 p. 121

In most national laws terrorism is prohibited, but the definition is very short, even in the Arab Convention for the Suppression of Terrorism of 1998, which envisages the expectation for a definition. Article 1 (3) of the Arab Convention for the Suppression of Terrorism:

*“The offences stipulated in the following conventions, except where conventions have not been ratified by Contracting States or where offences have been excluded by their legislation [...]”*<sup>110</sup>

Article 2 (a) of the Arab Convention:

*“All cases of struggle by whatever means, including armed struggle, against foreign occupation and aggression for liberation and self-determination, in accordance with the principles of international law, shall not be regarded as an offence. This provision shall not apply to any act prejudicing the territorial integrity of any Arab State.”*<sup>111</sup>

In the majority of the UN Conventions, the Member States agree taking into consideration a failed agreement on the exception for terrorism, and prohibit specific acts of terrorism. For example, the different Conventions related to hijacking of aircrafts, crimes against internationally protected persons, including diplomatic agents, the taking of hostages, unlawful acts against the safety of maritime navigation, etc. (see part III, chapter A, 1 of this present paper)

The US and some Latin American States and Sri Lanka agreed upon a Convention to Prevent and Punish the Acts of Terrorism in 1971 as well as the European Convention on the Suppression of Terrorism in 1977. Over time the condemnation of Terrorism has increased constantly.<sup>112</sup>

The first additional protocol of the European Convention on the Suppression of Terrorism in 1977, tried to separate the concept of terrorism and of freedom fighters. Big changes in the world community such as the fall of socialist regimes and national liberation wars changed the attitude about terrorists.

In the 1994 Resolution of the General Assembly the expectation of the Arab Convention was acknowledged and followed:

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<sup>110</sup> cited Arab Convention 1998, Article 1 (3), cited <http://www.al-bab.com/arab/docs/league/terrorism98.htm>

<sup>111</sup> cited Arab Convention 1998, Article 2 (a), cited <http://www.al-bab.com/arab/docs/league/terrorism98.htm>

<sup>112</sup> cp. Cassese 2003 p. 123

*“Criminal acts intended or calculated to provoke a State of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, rational, ethnic, religious or any other nature that may be invoked to justify them.”<sup>113</sup>*

This definition is closest to the one mentioned in the Convention on the Financing of Terrorism in 1999. Cassese points out that the definitions we already have in those above-mentioned Conventions are sufficient and clear and that terrorism is no longer just a treaty law crime.<sup>114</sup> He lists three points how a crime is considered as international terrorism:

The acts have to constitute a criminal offence under national legal systems;

The aims of the acts have to spread terror and;

The acts have to be politically, religiously or ideologically motivated.<sup>115</sup>

Cassese says that, most international rules on international crimes of terrorism are satisfactory. It covers all manifestations and forms of terrorist acts whether achieved by private individuals or State officials. The United Nations trend is towards a universal condemnation of terrorism. But there are still some States which are still politically confused and see terrorists as freedom fighters. This makes it difficult to find a general accepted definition of terrorism.<sup>116</sup>

We have mentioned two different kinds of terrorism, private or individual terrorism and State terrorism. Van Krieken says that in most definitions terrorism is defined to be of international nature. But he recognizes that terrorism can also manifest on a domestic level as well. Domestic terrorism involves citizens and the territory of one State that is directed against that State.<sup>117</sup> The State sponsors official terrorism or individual terrorism which is then directed against those in power. Private terrorism, or individual terrorism, is mostly committed by terrorist groups or Organizations.

There is a different term of terrorism that is not directed against a State. Acts committed by the ruling power in a dictatorial regime that rule with fear. This is defined in Article 33 [1] of the Fourth Geneva Convention of 1949 as mentioned above.

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<sup>113</sup> cited from the Resolution adopted by the UNGA 49/60, cited Cassese 2003, p 124

<sup>114</sup> cp. Cassese 2003, 124

<sup>115</sup> cp. Cassese 2003, p 124

<sup>116</sup> cp. Cassese 2003, p. 130f

<sup>117</sup> cited Van Krieken 2002, p. 16

Another important question is whether or not to exempt actions directed against armed forces from the definition. The first Article of the Convention for the Prevention and Punishment of Terrorism adopted by the League of Nations in 1937, defines terrorist acts as criminal acts directed against States which create a State of terror for a particular person, a group of people or the general public. The main characteristic is the use of violence in order to intimidate people and to achieve political or ideological goals.<sup>118</sup>

Distinguishing terrorism from freedom fighters is currently abated. Thomas Weigend points out specifically why an international agreement of the notion of terrorism is important. First of all, if it is an act of terrorism, it can lead to increased penalties, permit special means of investigation (such as surveillance of private conversations) and restrictions, and a terrorist act can intensify mutual international legal cooperation.<sup>119</sup> Of course, terrorism needs to be combated on an international level. International legal assistance began the need for a universal definition. Terrorists should not be provided with safe havens, but they can be extradited in another State.<sup>120</sup>

Cassese argues that a definition at the level of customary law has evolved within the international community. Disagreement is on whether this definition is applicable in armed conflicts and if a general agreed definition constitutes an exception of freedom fighters.<sup>121</sup> Another point of division is whether the acts of freedom fighters against civilians should be defined as terrorist acts. There are three classifications in armed conflicts on whether to: exempt freedom fighters; exclude attacks against civilians; include this in international humanitarian law and combine norms on terrorism and humanitarian law.<sup>122</sup>

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<sup>118</sup> cp. Weigend 2006, p. 916

<sup>119</sup> cp. Weigend 2006, p. 913

<sup>120</sup> cp. Weigend 2006, p. 913

<sup>121</sup> cp. Cassese 2006, p. 933

<sup>122</sup> cp. Cassese 2006, p. 933f

#### d) Various definitions of terrorism

Many norms describe terrorism. The German criminal code describes terrorism: *if the purpose of a crime is murder, homicide or genocide.*<sup>123</sup> The US-American law of 1987 defines terrorism:

*“The term “terrorist activity” means the organising, abetting or participating in a wanton or indiscriminate act of violence with extreme indifference to the risk of causing death or serious bodily harm to individuals not taking part in armed hostilities.”*<sup>124</sup>

Jochen Frowein addresses the issue in the International Convention for the Suppression of Terrorist Bombings on 12 January 1998, adopted by the General Assembly of the United Nations and not yet in force, that in Art. 2 it is defined that any person who commits an offence, defined by the Convention, such as a detonation of an explosive in a place of public use or a public transportation with the intent to cause death of serious bodily harm or extensive destruction of such a place. He points out that this convention can only be applied if a cross-border<sup>125</sup> activity emerges.<sup>126</sup>

For Laqueur, a definition of terrorism isn't necessary because the only common characteristics which include almost every definition of terrorism are violence and a threat of terrorism. An objective definition for him isn't possible because of the complexity of this phenomenon. Some say that they are not able to define terrorism, but they know a terrorist case if they see it. What we are sure of at this point, is that we are able to identify terrorism. This would be the subjective impression of terrorism.<sup>127</sup>

In fact, there is no general agreed definition of any political phenomenon, be it nationalism, fascism or communism. Terrorism in general has a bad connotation. This is different from “guerrilla”, for example. Most terrorist targets are civilians, different from “guerrillas”. Laqueur points out, that earlier terrorists tried to influence a wide audience with their acts but this psychological weapon used by terrorists is no longer necessary because of the immense material damage and the thousands of people they kill. The definition of terrorism made in the 1999 International Convention for the Suppression of Terrorist Bombings hasn't been

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<sup>123</sup> cited of Herbert Tröndle/Thomas Fischer, Strafgesetzbuch, 2001, § 129a, Rn. 4. ff, cited Frowein 2002, p. 881,

<sup>124</sup> cited of US American Public law 100-204 vom 22.12.1987, Section 901, cited Frowein 2002, p. 881,

<sup>125</sup> cp. Van Krieken 2002, p. 5: The globalization movement led to more economic liberalization and privatization and other free movements of goods (ABC arms included), capital, labour, etc. Through the US attack on September 11<sup>th</sup> border control and migration increase has become another meaning and more relevance in order to States resident of terrorist groups.

<sup>126</sup> cited International Convention for the Suppression of Terrorist Bombings from 12.1.1998, cited Frowein 2002, p. 882,

<sup>127</sup> cp. Herbst, p. 164

agreed upon by many States because it is too imprecise.<sup>128</sup> Furthermore, Laqueur mentions that “*The United Nations has not agreed on a definition of terrorism and for obvious reasons never will*”.<sup>129</sup>

### e) International Law and a definition of terrorism

It is important to have a clear idea what terrorism is within the international community. Therefore, we have to define and criminalize it. We shouldn't compete with different definitions. The UN and other international organisms have prohibited and criminalized terrorism as a crime against human rights, the State and international peace and security. A general definition would lead to harmonization of national criminal law and would reduce differences in legal treaties of States. Within the international community there are still some doubts on extradition for terrorist offences. With a definition, it could probably be solved.<sup>130</sup> Ben Saul describes that most of the anti-terrorism instruments of the UN condemn terrorism as unjustifiable, but for him *some acts of terrorism are at least excusable*.<sup>131</sup> In his opinion, a wider definition of terrorism would lead to either justify or excuse the act. Furthermore, he points out how important it is to take terrorism seriously by law, because if not, through distorted communication worse things could occur. In order to make international terrorism justifiable it is necessary to define it, because struggles of self-determination and violent internal rebelling are applicable under international humanitarian law. If there is no difference between international terrorism and struggles for self-determination, international humanitarian law would be applicable for both.<sup>132</sup>

Possible causes of terrorism have been suggested by Member States since the establishment of the Ad Hoc Committee to the first GA Resolution against terrorism (A/RES/3034 of 1972). These causes include: “*capitalism, neo-colonialism, racism, aggression, foreign occupation, injustice, inequality, subjugation, oppression, exploitation, discrimination, interference or intervention, subversion, disruption of development and political destabilization but also fascism or Zionist groups*.”<sup>133</sup> Member States had different ideas on where terrorism came from. Because of the discussion provoked, the Ad Hoc Committee, by international humanitarian law was established in 1977 by the committee to distinguish liberation movements and terrorist groups. In various General Assembly Resolutions it is defined that “*the right to self-determination, freedom and independence, as*

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<sup>128</sup> cp. Laqueur 2003, p. 232f

<sup>129</sup> cited Laqueur 2003, p. 233

<sup>130</sup> cp. Saul 2006, p. 66ff

<sup>131</sup> cited Saul 2006, p. 69

<sup>132</sup> cp. Saul 2006, p. 69ff

<sup>133</sup> cited from the UN GAR Ad Hoc Committee Report from 1973, cited Saul 2006, p. 72.

*derived from the Charter of the United Nations, of peoples forcibly deprived of that right [...] particularly peoples under colonial and racist regimes and foreign occupation or other forms of colonial domination, nor, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration (1970), the right of these people to struggle to this end and to seek and receive support [...].*<sup>134</sup>

Jus ad bellum describes the use of force by States and it is one rule of international law.<sup>135</sup> It is therefore, the right of sovereignty States to make war.<sup>136</sup> Jus in bello describes the right when “*the use of force has begun*”<sup>137</sup>. Jus in bello is the law that is governing during a war.<sup>138</sup>

Jus ad bellum: There are different forms of self-determination movements, for instance within a group identity or of an ethnic character. The UN Charter didn’t legitimate self-determination during the decolonization. Self-determination movements are treated differently under international law. In fact, it is not legal for liberation movements to use force for self-determination, but they don’t breach international law principles either. For crimes of international terrorism the exclusion of the use of force should be explicit.

Jus in bello: International humanitarian law is applicable in armed conflicts and it allows self-determination struggles. Combatants (Guerrillas) are not terrorists because they are included in international humanitarian law.<sup>139</sup>

## **f) Defining terrorism in the United Nations**

In the 1990s, the UN began looking for a general definition of terrorism. In the General Assembly Resolution 49/60 for the first time, it didn’t mention *any reference to peoples legitimate struggle for freedom and independence*.<sup>140</sup> It says “*criminal acts intended or calculated to provoke a State of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.*”<sup>141</sup>

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<sup>134</sup> cited from UNGA Resolutions 42/159 (1987), 44/29 (1989), 46/51 (1991), cited Saul 2006, p. 74,

<sup>135</sup> cp. Greenwood 1983, p. 49

<sup>136</sup> cp. Hobes/Kimminich 2004, p. 46

<sup>137</sup> cited Greenwood 1983, p. 49

<sup>138</sup> cp. Greenwood 1983, p. 49

<sup>139</sup> cp. Saul 2006, p. 75ff

<sup>140</sup> cited Weigend, p. 920

<sup>141</sup> cited from the GA Resolution 49/60 from 9 December 1994, cited Weigend 2006, p. 920

In 2002 the UN adopted an International Convention for the Suppression of the Financing of Terrorism which includes the first invariable definition of terrorism in an international legal treaty. Also, the UN Resolution 1373 from September 28 expands on the prohibition of terrorism. UN Resolution 1566 from 2004 calls upon all States to curb terrorism no matter what the cause or motivation. These Resolutions don't make any exception for freedom fighters.<sup>142</sup>

The Draft Comprehensive Convention against International Terrorism proposed by India on 12 of August of 2005, is the recent UN Documentation to criminalize acts of terrorism no matter what religious or other ideological motives the perpetrators have. It defines terrorism as followed in Article 2:

*"Any person commits an offence within the meaning of the present Convention if that person by any means, unlawfully and internationally, causes (a) death or serious bodily injury to any person or (b) serious damage to public or public property [...] when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international Organization to do or to abstain from doing any act. [...]"*<sup>143</sup>

Moreover, it would better international cooperation to prosecute these offences. This Draft Convention has the political support of the UN Secretary General and a lot of other UN Member States, but the main question is whether or not to include *a reference to legitimate struggle of peoples for independence and freedom*.<sup>144</sup> An explicit exception of this phrase in the Draft Convention would increase the number of ratifications by African and Asian States.

Security Council Resolution 1373 (2001), as Van Krieken points out, is the most important instrument agreed upon in terrorism. It is a follow up resolution of the 1269 (1999) which repeats this text and adds new aspects on counter-terrorism such as

*"Deny safe haven to those who finance, plan, support or commit terrorist acts, or provide safe havens; prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens, and prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents".*<sup>145</sup>

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<sup>142</sup> cp. Weigend p. 920

<sup>143</sup> cited Draft Comprehensive Convention against International Terrorism UN GA A/59/894.

<sup>144</sup> cp. Weigend, p. 921

<sup>145</sup> cited Van Krieken 2002, p. 5



International terrorism is a threat to international security and peace and therefore this resolution is applicable under Chapter VII of the UN Charter, which contains “*Action with respect to threats to the peace, breaches of the peace, and acts of aggression*”<sup>146</sup>

The definition of terrorism should include that the use of force of States is regulated in the Geneva Convention and other instruments, that acts under the 16 anti-terrorism instruments are terrorist acts and also a crime under international law. Terrorism, in times of armed conflicts is not permitted by the Geneva Conventions and its protocols. Furthermore, it should include the definition made in the 1999 International Convention for the Suppression of the Financing of Terrorism and in SC Resolution 1566 (2004). Last, but not least, a description of terrorism should be included in the definition.<sup>147</sup>

### **g) The dilemma of fighting against terrorism in the United Nations**

The Justification of the *use of force* (see Article 2 (4) UN Charter) against specific States, has become popular in the fight against terrorism. It has to be seen in a unipolar context, with the aim to fight against “axis of evil” or “rogue States”. The United States took steps to a pre-emptive attack against terrorists. The main problem is that within international organizations there is no official definition on what terrorism is (see part II, chapter B, 1 of this present paper). There are even lists with names and States sponsoring terrorists, which is criticized because it is not known how these lists were created. The UN has started to fight and define terrorism since the Cold War and the UN has put its efforts in fighting against international terrorism. The difficulty of defining terrorism is explained in the example of the PLO – the Palestine Liberation Organization, because for Israel this organization is a terrorist group, but for Muslims and Arabs it is a liberation movement.<sup>148</sup>

UN Secretary General Kurt Waldheim put terrorism prevention on its agenda because of the terrorist attack that occurred during the Olympic Games in Munich in 1972. This was the first effort of the United Nations to address terrorism in its General Assembly Resolution 3034 of 1972.<sup>149</sup> The General Assembly adopted 1999 the creating of a “Terrorism Prevention Branch” as part of the “United Nations Office on Drugs and Crime” UNODC.<sup>150</sup> (See Part III of this present paper).

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<sup>146</sup> cp. UN Charter, Chapter VII

<sup>147</sup> cp. A more secure world 2004, p. 52

<sup>148</sup> cp. Köchler 2003, p. 331f

<sup>149</sup> cp. Saul 2006, p. 71

<sup>150</sup> cp. Köchler 2003, p. 336

To define terrorism it is important to harmonize the basic legal rules of international criminal law related to acts of political, religious or ideological nature. This would also lead to a general application of Article 3 of the Geneva Convention and the Fourth Geneva Convention which is also related to the Protection of Civilian Persons in Time of War.<sup>151</sup>

Today, terrorism affects the unipolar power structure and threatens international peace and security. The United Nations should globally unite peoples to find norms and systems that better integrate and in addition, find a general acceptance of basic rules of law. It shouldn't be "*one man's terrorist is another man's freedom fighter*"; it should be "*no State's terrorist can be the other State's freedom fighter and vice-versa*."<sup>152</sup>

## 2. Concept of terrorism

Some see terrorism as a kind of warfare, not as a usual crime since it is more powerful and more effective. There are some decisive factors which could define terrorism, such as the violence terrorism provokes; the intention; the victims; the causes behind it; the relation of perpetrators to the State; the Organization; the absence of guilt; etc.<sup>153</sup> These factors should be enough to define terrorism in general, but the problem is that, not all of these factors are applicable at the same time. Therefore, terrorism has to be seen as a complex system that includes different specific factors.

Another problem of defining terrorism is that it has no recorded historical background as other crimes do. It is therefore difficult to set up a definition applicable for common law, domestic law and international law. To define terrorism, first of all, it is important to know the different functions of this notion, as well as the concept it portrays.

Most UN resolutions have different definitions for each resolution. But to make it more effective and clear, the definition should also include a broader scale of what terrorism is as a concept or the nature of terrorist organizations.<sup>154</sup> Terrorism as it is referred to all over the world shows a general understanding of this notion. Moreover, it provoked a new form of military violence as well as targeting assassination in the past few years. The US and Israel used this tactic to kill on a large scale.<sup>155</sup>

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<sup>151</sup> cp. Köchler 2003, p. 341f

<sup>152</sup> cited Köchler 2003, p. 349

<sup>153</sup> cp. Fletcher 2006, p. 894

<sup>154</sup> cp. Fletcher 2006, p. 896f

<sup>155</sup> cp. Fletcher 2006, p. 897

Another distinction which should be made at this point is the difference between war and crime. It is written in the Geneva Convention that both are overlapping, but they are two distinct categories which leave gaps in each other. Also terrorism and crime are different. For this reason, Fletcher points out that, it doesn't make much sense to define terrorism as if it were murder or theft and he also denounces the UN resolutions because they are bent on finding a precise definition of terrorism.

To define terrorism the following variables help to reflect its complex structure, but unfortunately don't lead us to a definition. The different applications of these variables produce counterexamples, such as a crime with a specific intent like that of September 11<sup>th</sup>. A crime against civilians and another example would be the terrorist attack against the USS Cole<sup>156</sup>.

Primarily, terrorist attacks are made up of violence, require intent and victims. Intent is a key element of an official definition and found in several international treaties, such as the UN Security Council Resolution 1566: *"the purpose of terrorism must be to intimidate a population or compel a government or an international organization to do or to abstain from doing any act."*<sup>157</sup> This variable is between empiric and symbolic purposes and achieved by violence.

Terrorism has gone global; it is a dangerous global player in a new world order. The Globalization process implicates national self determination, democratic development, States monopolies and a new form of global terrorism. We now have to establish an international legal framework by developing rules and norms to handle violence of a political, religious and ideological nature.<sup>158</sup> Barnhart also points out, that because of a complexity of terrorism, a regime of an international legal framework is unlikely, but that a model of legal regime on terrorism within the framework of the United Nations would be helpful in the cooperation between governments.<sup>159</sup> The Terrorism Prevention Branch has established a draft model law on counter-terrorism, but such a model law doesn't fit in all of the States legal frameworks. We always have to take into account the common law and domestic laws of the States. The practical aspects give a better insight why this draft model law on counter-terrorism is problematic.

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<sup>156</sup> missile destroyer of the US Navy which got attacked by a suicide bomber on 12<sup>th</sup> of October 2000

<sup>157</sup> cited Fletcher 2006, p. 902

<sup>158</sup> cp. Barnhart 2002, p. 8

<sup>159</sup> cited Barnhart 2002, p. 8

Since the Cold War terrorism has become more deadly. Today, the concept of terrorism is revenge, punishment or mass casualties.<sup>160</sup> It is a public phenomenon that provokes panic and fear of the people. We have to establish the appropriate counter measures to ban this international threat.<sup>161</sup> Like Barnhart said "*the best defence is not to give offence!*"<sup>162</sup>

### 3. Forms of terrorism

The form of terrorism is chameleon in nature and it includes different types of crimes. The motivation of the terrorists depends on what they are aiming for. The perpetrators of terrorist acts don't have one specific victim, therefore it is a depersonalization of the victim.<sup>163</sup> For the terrorist it doesn't matter if these victims die or are injured. What matters to him is that, he follows a political, religious or ideological motivation. The main characteristics of terrorism are linked to an international or internal armed conflict which is "*a military clash between two States or between two armed groups within one State.*"<sup>164</sup> to stage a crime against humanity that involves State authorities or threatens the security of this State or other States. Terrorism can be prepared (as mentioned before) by private individuals or by State officials. Of course, for the latter, the States have to take responsibility. It is unlawful for this State to instigate or assist in terrorist acts in another State's territory, because of the infringement against international customary norms.<sup>165</sup>

There are different classes of terrorist acts; which are seen as war crimes, crimes against humanity or crimes of international terrorism. If a terrorist act is directed against civilians it cannot be seen as a war crime, but as a crime against humanity. If it is defined as a crime of international terrorism, it is banned no matter what the target is. The advantage of seeing terrorist acts as crimes against humanity simplifies the prosecution of the terrorist act at the ICC, since terrorism doesn't fall under the jurisdiction of the ICC (see part II, chapter D, 1).

According to Article 4 [2] of the Second Additional Protocol of the Geneva Convention of 1977, internal armed conflict prohibits acts of terrorism against civilians. In the First and the Second Additional Protocols, this definition has been extended and is a modification of the principle that had already been made in regard to aerial warfare.<sup>166</sup> In international humanitarian law treaties terrorism is prohibited when it is targeted against civilians. It should

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<sup>160</sup> cp. Barnhart 2002, p.318

<sup>161</sup> cp. Barnhart 2002, p. 325

<sup>162</sup> cited Barnhart 2002, p. 326

<sup>163</sup> cited M. Delmas-Marty, cited Cassese 2003, p 125

<sup>164</sup> cited Casese 2003, p 125

<sup>165</sup> cp. Cassese 2003, p. 125f

<sup>166</sup> cp. Cassese 2003, p 126f

be underlined at this point, that if a definition is specific against civilians, it is also against civilian objectives as well. For example civilian aerial installations and it is therefore also criminalized. *Actus reus*<sup>167</sup>, is an attack on civilians or civilian objectives. Important is that these crimes are accompanied by a specific criminal intent, to cause terror among civilians.

International terrorism is considered as a crime against humanity. A terrorist act in time of peace, which is a systematic attack against civilians, is considered to be a crime against humanity. In the statute of the ICC in Article 7 (2)

*“arrest, detention or abduction of persons by, or with the authorisation, support or acquiescence of, a State or a political Organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolong period of time.”*<sup>168</sup>

As mentioned in the ICC Statute, terrorism as a crime against humanity, has to fulfill specific characteristics. For example, it has to be part of a widespread systematic attack against civilians. Acts against humanity involve crimes like murder, torture, persecution, extermination, etc.<sup>169</sup> In fact, under the Statutes of the ICTY (International Criminal Tribunal for the former Yugoslavia), the ICTR (International Criminal Tribunal for Rwanda) and the ICC (International Criminal Court) crimes against humanity are committed against civilians and terrorist acts wouldn't fall under their jurisdiction.<sup>170</sup>

Various treaties on terrorism have their own classification of this idea. Most of these definitions are indicated by customary rules. These treaties aim to punish and prosecute the perpetrators of a terrorist offence. Primarily, the idea of these treaties is to achieve an effective and prompt punishment by national authorities with the cooperation of other States.<sup>171</sup>

#### **4. Sources of terrorism**

The research on sources of terrorism is still in the embryonic phase and much more work has to be done. What research has given us on contemporary international terrorism so far, is that we can list, four categories of this phenomenon: Individual terrorism, the terrorist organizations or groups, State terrorism and terrorism in the international system. Terrorism

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<sup>167</sup> criminal act

<sup>168</sup> cited from the ICC Statute, Article 7 (2), cited Cassese 2006, p. 949

<sup>169</sup> see ICC Statute, Article 7 and 8

<sup>170</sup> cp. Cassese 2003, p. 127

<sup>171</sup> cp. Cassese 2003, p. 130

is multidisciplinary. Therefore, we have to include different fields such as criminology, economics, history, politics, international relations, sociology, psychology, theology etc.<sup>172</sup> More important in finding sources of terrorism are the causes of terrorism. There is no definition on what the causes of terrorism are, because among other things, terrorism is an effect of political, economic and historical context. It isn't possible to generalize the causes of terrorism. They are not a response to external conditions but rather responses to decisions made by political actors. Causes of terrorism are politically, religiously or ideologically motivated.<sup>173</sup> It is important to understand the sources of each terrorist attack before responding. If not, it could lead to an aggravation of the causes.<sup>174</sup> Individual terrorism started with behavioural science in the US. Acts of individual terrorism include external factors in such fields as psychology, political science and criminology. It can also stem from a religious tradition. Here it is important to point out that individual terrorists are not psychologically abnormal. Individual terrorists are leaders and have their recruits. The profile of terrorists differs with each act.<sup>175</sup> The fact is, that individual terrorism, or terrorism in all four categories, is a psychological weapon. Terrorism is basically a group activity. This group or organization can share the same ideology, religion or politics. The psychology of peer pressure or group identification should be pointed out here. We have to realize the illegitimate belief structure to understand the sources of terrorism. Terrorist groups in the past have a hierarchical structure with leaders and members. Nowadays, terrorist groups and organizations are decentralized and non-hierarchical. They are well connected by internet or satellite telephones and are following the same ideology or religion and they are influenced by society.<sup>176</sup> The role of the State in international terrorism is very important. States can support, sponsor or even authorize terrorist groups. The State has a main role in understanding the sources of terrorism. As Cronin points out "*transnational terrorism (...) is a threat to the sovereignty and the legitimacy of the State itself.*"<sup>177</sup> It is very difficult to identify sources of terrorism in the international system. Samuel Huntingtons<sup>178</sup> thesis in the "Clash of Civilization" can be considered here. The growing fundamental and ideologically based culture of the Islamic world can lead to a global conflict with the western world. This clash of civilization cannot be seen as a source of terrorism, since terrorism is an already established phenomenon. Another interpretation on the sources of terrorism would be the process of globalization. Globalization can also be defined as westernization or democratization.<sup>179</sup>

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<sup>172</sup> cp. Cronin 2004, p. 19f

<sup>173</sup> cp. Cronin 2004, p. 20f

<sup>174</sup> cp. Cronin 2004, p. 22

<sup>175</sup> see Cronin 2004, p. 24

<sup>176</sup> cp. Cronin 2004, p. 27f

<sup>177</sup> cited Cronin 2004, p. 33

<sup>178</sup> Samuel Huntington with his book "The Clash of Civilization"

<sup>179</sup> cp. Cronin 2004, p. 35ff

Defining sources and causes of terrorism is very difficult and more effort is needed to obtain a clear idea of the sources of terrorism.

## C. International Law and terrorism

International law describes the legal basis of international relations between States. It is also connected with the above-mentioned international relations theories. Definition of international law:

*“Völkerrecht umfasst zum einen die Prinzipien und die Verhaltensregeln, an die sich Staaten gebunden fühlen und die sie deshalb in ihren gegenseitigen Beziehungen beachten, sowie solche Rechtsregeln, die sich auf die Funktionsweise internationaler Institutionen und Organisationen sowie deren Beziehung zueinander und ihre Beziehungen zu Staaten und Individuen beziehen und schließlich einige Regeln, die auf Individuen und nichtstaatliche Einheiten insoweit Bezug nehmen, als diese Einheiten in den Kreis der internationalen Rechtsgemeinschaft einbezogen sind.”<sup>180</sup>*

International organizations, individuals, non-governmental organizations and transnational companies are also subject to international law. International law norms are voluntarily based for States and other actors, but it also requires a high degree of acceptance. It is also difficult to convince States to sign those norms which they are not in favour of, but it is necessary for the international community. Since the Second World War more States have been established through the decolonization process and therefore, more States are part of international law, as well as other international actors are. The importance of international law since then has increased. Today, the challenge of international law norms is to increase its effectiveness. Other challenges are globalization, international migration and global environmental threats. The responses of international terrorism, the biggest threat in the 21st century, are not satisfactory for international law.<sup>181</sup>

International law is characterized by mutual dependence on the norms created by one State and accepted by another. Furthermore, international law is justified by the International Criminal Court (ICC), the International Court of Justice (ICJ) or some specialised tribunals such as the International Criminal Tribunal of the former Yugoslavia (ICTY) or the International Criminal Tribunal of Rwanda (ICTR).

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<sup>180</sup> cited Hobes/Kimminich 2004, p. 8

<sup>181</sup> cp. Hobes/Kimminich 2004, p. 1ff

The first document with international law characteristics was the Charter of the League of Nations.<sup>182</sup> International law describes the right of war. Territory of war is the State territory of the war State, the high sea, and the aerial space above it.<sup>183</sup>

The United Nations is the main actor of international law and constitutes a supranational organization. UN General Assembly Resolutions influenced the development of international law. Those resolutions are not legally bound to Member States (of course there are some exceptions, like the UN SC Resolution 1373 of 2001). Soft law in international law is a norm that is not applicable in international courts. They are often used in order to avoid dogmatic differences or in economic relations between developed countries and third world countries.<sup>184</sup>

The principle of distinction between combatants, civilian and protected persons, has to be guaranteed under international law. Combatants are expected to fight; non-combatants are military doctors, military priests or members of the military administration. Civilians are protected from any military attacks and, in fact, are not allowed to join military action.<sup>185</sup>

International terrorism in international law is relevant when a State is involved in a terrorist act. The involvement of a State includes the financial or material support of terrorists, or the authorization of the act. Some say that acts of terrorism are prohibited through the Statute of the International Court of Justice Art. 38 1 c. Others say that it is prohibited because of the customary international law.<sup>186</sup>

Zimmer is of the opinion that terrorists within the 3<sup>rd</sup> Geneva Convention shouldn't be at the same level as combatants within international law and, in fact, they aren't. Terrorist acts and how the attacked State responds, is most of the time not within international law norms but the political considerations are more intense. For instance, like how the US attacked Bagdad in 1993 and called upon their right of self-defence according to Article 51 of the UN Charter with the excuse that Iraq had planned an attack on President Bush I.<sup>187</sup>

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<sup>182</sup> cp. Hobes/Kimminisch 2004, p. 45

<sup>183</sup> cp. Hobes/Kimminich 2004, p. 522f

<sup>184</sup> cp. Hobes/Kimminich 2004, p. 196ff

<sup>185</sup> cp. Hobes/Kimminich 2004, p. 512f

<sup>186</sup> cp. Zimmer 1998, p. 15

<sup>187</sup> cp. Zimmer 1998, p. 46f



Within international criminal law, four main elements of crime are applicable: genocide, crimes against humanity, war crimes and aggression.<sup>188</sup> Terrorism is not yet a crime under international criminal law. The main reason for this is the lack of definition.

The UN Charter prohibits the use of force in general, but the right of self-defence or the collective self-defence are exceptions of the use of force.<sup>189</sup>

## 1. Terrorism and the Right of Self-Defence

The biggest and most destructive terrorist act in this century so far, has been the attack on the World Trade Centre, the attack on a wing of the Pentagon and the crash in Pennsylvania by hijacked planes on September 11<sup>th</sup> 2001. This incident caused thousands of lives and was a terrorist attack against the United States of America. The methods used by the terrorists were massive with of a destructive force. The Organization Al Qaida with base in Afghanistan was made responsible for the attack. Osama bin Laden is considered to be the leader of Al Qaida. In fact, no Organization has admitted to these attacks as theirs.<sup>190</sup>

What is interesting for this paper is the further legal procedure in terms of international law taken by the United States and the United Nations.

On October 7<sup>th</sup> the United States and the United Kingdom started air attacks against the Afghan Taliban regime. The Taliban ruled over 90% of Afghan territory, but it was not acknowledged as the official government of Afghanistan by other States. De facto there was no other government to be recognized by other countries. The United States justified their attacks in Afghanistan as an act of self-defence. For international law this point is important. In the UN Charter in Article 2 [4] there is an explicit prohibition of the use of force between States. Article 2 [4] UN Charter:

*“All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.”*<sup>191</sup>

International law prohibits States from using military force, even when the government of a State has not been internationally recognized, like as in the case of Afghanistan. An attack of

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<sup>188</sup> cp. Hobes/Kimminich 2004, p. 249

<sup>189</sup> cp. Hobes/Kimminich 2004, p. 307f

<sup>190</sup> cp. Schmalenbach 2002, <http://www.germanlawjournal.com/article.php?id=189>

<sup>191</sup> cp. UN Charter, Art. 2 [4]

the United States on Afghan territory would have been in contempt of the general prohibition of use of force. The exception would be Article 51 of the UN Charter namely the right of self-defence. The UN Security Council has authorized the right of self-defence to the United States to attack Afghanistan. Article 51 UN Charter:

*“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”*<sup>192</sup>

There are three main difficulties with use of force as self-defence in international law especially in case of a terrorist attack. The terrorist act, first of all, has to be an act of a State; secondly, the attack has to be comparable in an inter-State combat; and lastly, the UN Charter requires the armed attack to be ongoing when a State wants to use the right of self-defence. It is allowed to take the right of self-defence when a State is affected by the unlawful use of force by another State. But did Afghanistan attack the United States? In international law it is still unclear how to take action if the terrorist act has been organized by a State but not been conducted by the same State.<sup>193</sup>

If a State is attacked by private individuals on the high sea or in a plane above the high sea, the attacked State has the right to take counter-measures without infringing Article 2 [4].<sup>194</sup> Another scenario would be if terrorists commit acts based in territories of failed States. In this case, Article 51 of the UN Charter would be in favour of the attacked State. A failed State would be under the protection of the UN Charter (Art. 2 [4]). Ninety percent<sup>195</sup> of Afghanistan was ruled by the Taliban, therefore it cannot be considered as a failed State.

International law consists of relatively stable rules referring to attribution of acts and omissions of a State. Another element of this schema would be “*de facto organs*”. These are

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<sup>192</sup> cp. UN Charter, Art 51

<sup>193</sup> cp. Frowein 2002, 886

<sup>194</sup> cp. Schmalenbach 2002, <http://www.germanlawjournal.com/article.php?id=189>

<sup>195</sup> cp. Moshagen 2002, <http://www.forum-recht-online.de/2002/202/202moshagen.htm>

organisms which are acting in some connection with the State: “... *in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.*”<sup>196</sup>

Such is the case of Nicaragua in 1986: The United States supported Nicaraguan paramilitary groups. The ICJ (International Court of Justice) couldn't do much when Nicaragua tried to bring action against the United States because logistical support or simply lodging them is not an armed attack, it's “only” a contempt against international law. In case of acts made by military or paramilitary groups to a State, it has to be deferred whether it was only equipping and financing or also planning and coordinating that took place. International law doesn't require the same control for individuals as “de facto organs” for States. Taking this into consideration, the United States would have the right to take action against the Taliban. The United States blames the Taliban for not handing over Osama bin Laden.<sup>197</sup>

Before taking military action in Afghanistan, the United States justified their right of self-defence to the UN and the community of States. The Security Council permitted the use of force on the basis of Chapter VII of the UN Charter to take action following the terms of collective security. For several reasons the United States wanted to execute their right to self-defence. Among other things, the United States didn't lose their freedom of action. But in fact, it is difficult at this point to cross the line to a pre-emptive war. Zimmer in 1998 writes, that in case of a military attack directed against another State, the concerned State is allowed to use the right of self-defence as mentioned in the UN Charter Article 51.<sup>198</sup>

The Security Council didn't have to authorize use of force for right of self-defence because in both Resolutions, 1368 and 1373 - considering the attacks on September 11<sup>th</sup> - say that action against terrorists is also a threat to international security in terms of Article 39 Chapter VII of the UN Charter. On the other hand, in the UNSC Resolution, 1368 and 1373, the Security Council recognized that there is an “*inherent right of individual or collective self-defence in accordance with the Charter.*”<sup>199</sup> This right hasn't been limited or granted by the UN because it is inherent and the Security Council doesn't have the right to grant the right of self-defence to a State.<sup>200</sup>

Article 51 of the UN Charter has been extended. The change made now includes use of force in the right of self-defence, when terrorist attacks can be characterized as armed

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<sup>196</sup> cit. Draft Article 8: (2001), see Gregory Townsend, State Responsibility of Acts of *De Facto* Agents, cited Schmalenbach,

<sup>197</sup> cp. Moshagen 2002, <http://www.forum-recht-online.de/2002/202/202moshagen.htm>

<sup>198</sup> cp. Zimmer 1998, p. 35

<sup>199</sup> cit. SC Resolution 1368 (2001) and SC Resolution 1373 (2001), cited Schmalenbach,

<sup>200</sup> cp. Schmalenbach 2002, <http://www.germanlawjournal.com/article.php?id=189>

attacks, and in such cases where terrorists are continuing with their practices. However, the United States has taken the right of self-defence beyond Article 51 of the UN Charter. The right of self-defence is only justifiable in situations of self-defence (accorded in Article 51 of the UN Charter).

There are still some questions about the right of self-defence. For example, if whether or not the right of self-defence is affected if the harbouring State prosecutes the terrorists, and again if the sentence given isn't what the attacked State was expecting. In general, the extradition of terrorists isn't required in international law. In fact, Article 51 of the UN Charter includes the prohibition of use of force, territorial integrity, the right of self-defence and enforcement measures against harbouring States.<sup>201</sup>

There are different points of view on the military invasions by the United States in Afghanistan as well as in Iraq (which won't be provided in this paper). Some call it War on Terror, some call it War on International Law.<sup>202</sup>

## **2. Terrorism as a Challenge for International Law**

In international law, international cooperation between States is essential. As mentioned before, terrorism is not a new phenomenon, it has been quite common in the 19 century (Sarajevo 1914 and Marseilles 1934).<sup>203</sup>

Frowein describes terrorism as a form of warfare by the weaker to achieve unlawful aims such as the liberation of a State, people or some minority. Now it is national and international. Terrorist acts are targeted against great numbers of people, mostly civilians, and are extremely violent. It is against international law to harm civilians. The quintessence of political terrorism for Frowein is the theory of guerrillas/freedom fighters.<sup>204</sup>

It is the liability of every Member State of the United Nations to combat and prevent terrorism. There are several UN General Assembly and Security Council Resolutions which underline the importance of the prevention of terrorism. Especially the Friendly Relations Declaration of 1970 that says every State has the liability not to endure a terrorist Organization.<sup>205</sup>

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<sup>201</sup> cp. Schmalenbach 2002, <http://www.germanlawjournal.com/article.php?id=189>

<sup>202</sup> cp. Moshagen 2002, <http://www.forum-recht-online.de/2002/202/202moshagen.htm>

<sup>203</sup> cp. Frowein 2002, 879

<sup>204</sup> cp. Frowein 2002, 883

<sup>205</sup> cp. Resolution Nr. 2625 of the General Assembly from 24 October 1970

The UN Resolution 1373 from 28 September 2001, is based on Chapter VII of the UN Charter which explicitly decided that all member States shall

*“Take necessary steps to prevent [...] terrorist acts, including by provision of early warning to other States by exchange of information. [...] Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens. Ensure that any person who participants in the financing, planning [...] of terrorist acts is brought to justice [...]”.*<sup>206</sup>

Also, the Security Council calls upon the Member States to ratify other international conventions.

Member States have the liability to inform other States with relevant information. International cooperation also makes the States liable if a terrorist act can be abolished with this information. The international cooperation between States isn't that simple, as it shows in the example of a German airplane which was hijacked in Somalia in 1977. Somalia wasn't in the position of taking counter-measures against the terrorists. The Somalis agreed for the Germans to take action in their territory. From the point of view of international law the question comes up, if Somalia was liable to take action or not. UN Resolution 1373 calls on the liability of States for international cooperation, as mentioned earlier. Another problem would be the extradition to another State. Extraditions to a State where death penalties are common are prohibited in international law, adopted in the 6<sup>th</sup> Additional Protocol of the European Convention on Human Rights.

In international law, terrorists are not mentioned as such. In fact, they are criminals and can be brought to jurisdiction in every State. In States with universal jurisdiction, terrorists can be judged within international law, no matter if they are from another State, if the act occurred in another State or if the victims were from another State. It is time to extend this universal jurisdiction in cases against humanity to assure the detention of such terrorists.<sup>207</sup> From an international law point of view, it shouldn't be a problem to condemn perpetrators in a State which isn't affected by the committed act in neither territory nor nationality.

According to international law the situation in Guantanamo is very difficult, because it is US-American territory and therefore, the same legal order as in the United States. According to the United States, the people arrested in Guantanamo are not considered to have international law status, which is against international law rules. The 3<sup>rd</sup> Geneva Convention

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<sup>206</sup> cited UN Resolution 1373, 2001

<sup>207</sup> cp. Frowein 2002, 892ff

is about the protection of prisoners of war, which also includes the Taliban in Guantanamo under Art. 4 of this Convention: *“Prisoners of war [...] are members of the armed forces of a Party to the conflict, as well as members of militias and volunteer corps [...] operating in or outside their own territory.”*<sup>208</sup>

The link between Terrorism and international legal assistance is problematic. For example, according to the European Convention on the Suppression of Terrorism of 1977 extradition in cases of terrorism is inapplicable. Extradition can only be granted in cases of political prosecution. According to the UNSC Resolution 1373 States have to extradite the perpetrator or bring them to trial in their own territory. But it is not confirmed in Protocol No. 6 of the European Convention for the Protection of Human Rights of 1983 to extradite perpetrators to States practicing death penalty.<sup>209</sup>

Modern Terrorism is a challenge for human rights in general. There is still a controversy on how far to restrict human rights, or in some cases to merge human rights in order to protect against terrorism. In 1976 there was a terrorist case in Ireland. The European Commission for Human Rights considered the examination tactics used as torture. The perpetrator had to stand blindfolded in a room for a long time with a loud noise, food and water had been extremely limited and in case he fell asleep they woke him up again and again. Here the question arises, if torture or inhuman treatment should be legitimate, if this is the only way to get information on imminent danger. So far this hasn't been a real issue and let's hope it doesn't become one.<sup>210</sup>

Another part of international law is the International Covenant on Civil and Political Rights, adopted by the General Assembly on 16 December 1966. Article 9 of this Covenant says that *“Everyone has the right of liberty and security of person. No one shall be subjected to arbitrary arrest or detention. [...] Anyone who is arrested shall be informed, at the time of arrest, of the reason of his arrest and shall be promptly informed of any charges against him. [...] A criminal charge shall be brought promptly before a judge.”*<sup>211</sup>

The guarantee of a *habeas corpus*<sup>212</sup> trial; The United States has violated tremendously this international covenant in Guantanamo.

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<sup>208</sup> cited 3rd Geneva Convention, Article 4

<sup>209</sup> cp. Frowein 2002, 895

<sup>210</sup> cp. Frowein 2002, 895ff

<sup>211</sup> cited Art. 9 of the International Covenant on Civil and Political Rights

<sup>212</sup> Latin for “you should have the body”; it is an important instrument for individual freedom against State action, the writ of habeas corpus.

Terrorism is a real threat for human rights and international law. Therefore, the guarantees of Article 3 of the Geneva Convention protecting Human Dignity and Fundamental Human Rights, have to be protected and respected by the States in order to emerge victorious against terrorism.<sup>213</sup>

### 3. Terrorism in international law

Terrorism is a phenomenon which affects not only one State, but is a threat for all States. The question now is, how can States work together to suppress and eradicate this fear, and how the perpetrators can be arrested or extradited. One legal basis is the Decision on the European Arrest Warrant of the Council of the European Union, which was enforced on 1 of January 2004. It is a reason for arrest warrants on the European Union level. Another EU Decision was made on Combating Terrorism the same day.

In the international legal framework there are some treaties pointing out *a substantial consensus on a definition of terrorism in time of peace*.<sup>214</sup> These treaties are the Arab Convention, the Organization of African Union (OAU) and the Conference of Islamic States. Terrorism consists of any crime normally forbidden in the national penal system. Terrorism has two elements, one objective and another subjective. The first one is an act already criminalized such as murder or serious bodily harm and the second element is the purpose of the act. Terrorist attacks have a goal, like in the case of 11 September, to change the United States policy in the Middle East. They have a primary and essential purpose, therefore it is exploited.<sup>215</sup> Another element is the motive of the act, which has to have a political, ideological or religious based motive. This element is important to differentiate terrorism from other crimes. Terrorists act in groups or Organizations, and individual terrorists act on behalf of an Organization or group. If it is proved that an act has no political, ideological or religious motivation it isn't considered as an act of international terrorism. In practice, the element of political and ideological motivated acts is difficult to recognize, because taking hostages and killing are elements of normal crimes, but can also be part of a terrorist act. In fact, a motive isn't sufficient enough to classify a criminal act as terrorism.

The UN adopted different international conventions with different categories to prosecute terrorist acts by a domestic legal order. Like conventions on the safety of aircrafts; taking control by force of an aircraft; acts of violence against persons on aircrafts; other violent acts against internationally protected persons; unlawful possession of nuclear material as well as

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<sup>213</sup> cp. Frowein 2002, 894ff

<sup>214</sup> cited Cassese 2006, p. 936

<sup>215</sup> cp. Cassese 2006, p. 938

the threat of nuclear material; taking control by force of a ship; taking control of a fixed platform; acts of violence against international civil aviation; acts with plastic explosives and delivering plastic explosives. Those conventions set out the objective elements of unlawful conduct. The 1979 Montreal Convention against the Taking of Hostage and the 1999 Convention for the Suppression of the Financing of Terrorism also include the purpose of the perpetrators.<sup>216</sup>

International humanitarian law and international criminal law have both covered acts of terrorism but only during international or internal armed conflicts. State terrorism is another form of terrorism in war attacks carried out against a civilian population. It is politically or ideologically motivated with no legal value. Terrorism in armed conflict is a kind of war crime, or better, a sub-category of war crime of terrorism. International treaties ban terrorism in armed conflicts. As mentioned before in the Fourth Geneva Convention of 1949, Article 33 (1) *terrorism is prohibited against civilians and also if prepared by civilians*.<sup>217</sup> Or in the Second Additional Protocol of 1977, Article 4 (2) (d) says that *terrorist acts against all persons who do not take a direct part or have ceased to take part in hostilities, whether or not their liberty has been restricted*.<sup>218</sup> International humanitarian law bans terrorism in international and internal armed conflicts.

#### 4. Terrorism and the international legal order

Politically motivated crimes and their use of violence isn't a new phenomenon. Only the form in which they are carried out has changed. To fight Terrorism, national and international strategies should involve military, economic, political and legal methods. Justice should provide the legal basis for military and economic activities.<sup>219</sup> The UN is needed in the fight against terrorism as the main norm-setter. In fact Van Krieken mentions that the legal response to terrorism should be effective, solution-orientated<sup>220</sup> and aim to create an international legal order.<sup>221</sup>

Collective security has become a keyword within the international community. After the High-level Panel on Threats, Challenges and Changes: A more secure world: or shared responsibility (December 2004), Kofi Annan (former UN Secretary-General) provides the

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<sup>216</sup> cp. Cassese 2006, p. 942f

<sup>217</sup> cited from the Fourth Geneva Convention, Article 33 (1), cp. Cassese 2006, p. 944,

<sup>218</sup> cited from the Second Additional Protocol of the Geneva Convention, Article 4 (2) (d), cp. Cassese 2006, p. 944

<sup>219</sup> cp. Van Krieken 2002, preface

<sup>220</sup> cp. Van Krieken 2002, p. 10

<sup>221</sup> cp. Van Krieken 2002, p. 10



Member States with a new report called "In Larger Freedom". Among the Member States there still exists a lack of agreement in the role of the UN to provide collective security. Because of the new threats the world is facing in the 21. century (not just international war, internal conflicts, civil violence, organized crime, terrorism or weapons of mass destructions, we also have to fear poverty, deadly infectious disease and environmental catastrophes) the State's concern of all these new threats could guide us into a collective security system. But it has to be mentioned that we are not in the position to choose because the new threats are equal to all, they are interconnected.<sup>222</sup> The UN has to be transformed into a more effective instrument. Member States have to ratify the instruments against international threats in order to prevent against terrorism in the first place, but also against organized crime and corruption. It is a required commitment of Member States to act urgently to prevent that chemical, biological and nuclear weapons are in the hands of terrorist groups and organizations. In fact, ratifying is only the first step, followed by continuing the process on disarmament, especially in the field of nuclear material. We have to strengthen the military and civilian support to prevent terrorism, end wars and reach sustainable peace. This can save millions of lives as the examples of the peace agreements of the Bicesse Accords in Angola and the Arusha Accords in Rwanda have shown.<sup>223</sup>

The threat of terrorism has become more urgent over the last 5 years. One attack with nuclear, biological or chemical weapons would be enough to change this world forever. The UN Global Counter-Terrorism Strategy has five pillars that must be aimed for: people shouldn't support terrorism, the access of funds or material has to be denied to terrorist groups or organizations, States shouldn't sponsor terrorism, a States capacity has to be strengthened in order to prevent terrorism and human right principles has to be defended. Kofi Annan also endorses a definition of terrorism as mentioned in the High-level Panel Report. His special concern is on State-terrorism. He also calls upon Member States to ratify the International Convention for the Suppression of acts of Nuclear Terrorism. Further, he points out that we shouldn't *lose sight of human right laws and our accountability to citizens all around the world.*<sup>224</sup>

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<sup>222</sup> cp. Annan 2005, p. 33f

<sup>223</sup> cp. Annan 2005, p. 34

<sup>224</sup> cited Annan 2005, p. 35f

## D. International Criminal Law

Terrorism is only one of many atrocities, probably the most effective, therefore a chapter in this thesis about international criminal law is essential. During my internship at the Terrorism Prevention Branch I learned a lot of things, and I got to know the legal importance of international (criminal) law. Without an objective penal code no appropriate prosecution and punishment will be possible to curb terrorism. Therefore, one of the main aims of the United Nations Terrorism Prevention Branch is to convince States to ratify the existing Conventions and Protocols (see part III, chapter A, 1). It is not said that with an appropriate penal code terrorism will be banned, just like Cassese said in this book, we should be able to see *the merits and the limitations of the judicial response*.<sup>225</sup>

The generally asked question by Cassese is: how the international community at present reacts to atrocities. Terrorism is only one of these atrocities. First, it's important to understand how such atrocities come about.

The existence of atrocities has many different origins. At the end of the Cold War, there was a big gap between the rich and the poor, and the phenomenon such as nationalism or religious fundamentalism emerged which led us into more internal conflicts. Another reason could have been the failure of international sanctions by States which was also a lack of enforcement by the international community. Cassese mentions the Security Council was not able to resolve major international crisis quickly because of the adoption of economic strategies and failure to command respect for international law, and also points out that with its mandate under Chapter VII of the UN Charter, its main function is the prevention of threats to international peace and security. The Security Council is not made to react promptly. The UN Charter is basically made to deal with international crisis in regard to endanger international peace and security. Minor conflicts are States concerns but the Security Council has the right to step in when a conflict situation arises, but of course only if it is a threat for international peace (see also Security Council Resolution 1373, annexed).

Nevertheless, some individual States have other methods of counter-measures in relation to violations of human rights or other atrocities, which will be the suspension of commercial treaties, trade embargos, freezing or seizure of assets, etc.<sup>226</sup> Cassese explains that if some States interests are about to fail because another State harms those interests, this can lead

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<sup>225</sup> cit. Cassese 2003, p. 3

<sup>226</sup> cit. Cassese 2003, p.4

to the breaching of international law. Cassese also points out an interesting aspect which is the community's obligations, consisting of two features:

*"they are incumbent upon each and every member of the world community towards all other members and the other feature is that any other member of that community has a correlative right to demand fulfilment of these obligations and, in case of breach, may be entitled to resort to counter-measures."*<sup>227</sup>

There are other responses to atrocities, various reactions and mechanisms used. States and individuals have different ways of handling international crime. Revenge is one responds to international crimes, a form of primitive justice<sup>228</sup> but it has been used. Another form is forgetting about the cruel crimes which haven't been judged yet and therefore it is better to just forget them. There are several dictators or leaders who have never been judged and therefore kept impunity. As Cassese points out the victims of those people die twice, first, physically and second, because they are forgotten. Therefore, international criminal law is very essential in terrorist cases.

Importance of a Jurisdiction: In trials the guilt of the perpetrator will be assigned. The courts should then give the perpetrator the right punishment, this way insuring the victim's retribution. Victims should know that their tormentors are now paying for their actions. It has also been established and recorded for further generations to know how to punish the perpetrators and not to forget the victims.<sup>229</sup>

Criminal law principles require the possibility of defences for a fair trial. It is applicable in crimes against humanity and war crimes, therefore it should also be applicable in terrorism. Of course, international criminal law cannot treat each terrorism case equally because the motives and forms of the act are variable. Civil law systems distinguish between justifications or excuses, *they are rational explanations for wrongdoing*<sup>230</sup> but both could lead to acquittal.

## **1. Terrorism as International Crime**

According to Cassese, there are three different classes of international crime: Aggression, Torture and Terrorism. In this thesis we are interesting in terrorism.

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<sup>227</sup> Cassese 2003, p. 4

<sup>228</sup> cit. Cassese, 2003, p. 5

<sup>229</sup> cit. Cassese, 2003, p. 6

<sup>230</sup> cited from J. Gardner "In Defence of Defences", cited Saul 2006, p. 95

It is not only important to define the notion of terrorism as such, it would also be interesting to define terrorism as an international crime and to establish it in international jurisdiction in international tribunals, national courts under the universal principles.<sup>231</sup> Most terrorist acts could be sanctioned appropriately, when this aim is achieved. Terrorism is an offence which should be punished in national prosecutions, but it is found at an international criminal law level. The consensus of what a terrorist crime is compared to what a normal offences is, is the problem. Scholars opinions differ as to the definition of terrorism as an international crime. For Cassese a clear definition of terrorism as an international crime already exists.<sup>232</sup> But in fact, terrorism is not (yet) considered to be an international crime according to the ICC Statute. The main problem here is the lack of a definition. Other reasons why terrorism is not yet considered as an international crime are, that terrorism isn't considered a serious enough offence to be in the International Criminal Court's jurisdiction; it would have politicized the ICC and terrorism would be more effectively prosecuted at a national level or with the cooperation of other States.<sup>233</sup> The ICC is the additional and complementary safeguard of national criminal jurisdiction.<sup>234</sup>

With the Rome Statute in 1998 the International Criminal Court became a reality. Already in the 1937 Convention for the Prevention and Punishment of Terrorism, the League of Nations agreed upon a creation of an International Court. Precursor of this international court could have been the Military Tribunals of Nürnberg and Tokyo (1945-1948), which have been a work of cooperation between the States in the aftermath of the Second World War. With the Rome Statute the ICC has become its jurisdiction over persons who have committed serious crimes of international concern. Terrorism as such hasn't been included under this jurisdiction until today. This court's jurisdiction should be complementary to national criminal jurisdictions. Van Krieken's opinion that terrorism cannot be seen as other crimes which fall under the jurisdiction of the ICC, such as crimes of genocide, crimes against humanity or war crimes is very interesting. For him this would be counterproductive.<sup>235</sup> But just like Cassese before, Van Krieken also points out international terrorism can be a crime against humanity and therefore it falls under the Statute of the ICC.

Hence, not all terrorist acts can be considered as international crimes. Terrorist attack within States is a criminal offence punished in each State, for example the IRA in Ireland or the ETA in Spain. Other States may also be obliged, on behalf of treaties, to support in punishing the perpetrators. Terrorism is an international crime when there are no limits in the effects to

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<sup>231</sup> cp. Weigend, p. 914

<sup>232</sup> cp. Weigend, p. 914

<sup>233</sup> cp. Cassese, 2003, p 125

<sup>234</sup> cp. Van Krieken 2002, p 107

<sup>235</sup> cp. Van Krieken 2002, p 107

one State or when the State in which the terrorist organization is found or a foreign State supports and tolerates the crime. The UN Security Council Resolution 1368 from 12 September 2001 condemned the attacks in New York and Washington and stated these attacks “*like any act of international terrorism, as a threat to international peace and security*”.<sup>236</sup> International terrorism is described by customary international law. *Actus reus*<sup>237</sup> of a terrorist crime contains a criminal offence under a national legal system, in an aim to spread terrorism, like fear and intimidation and it has to be politically, ideologically or religiously motivated. Victims of terrorist acts, considered as international crime, can be civilians, military or other official personnel.<sup>238</sup>

In Article 7 and 8 of the Statute of the International Criminal Court (ICC), various classes of crime are listed, but terror against civilians isn’t listed in this article. The ICC will not codify existing customary rules. Article 10 of the Statute says “*nothing in this part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this statute*.”<sup>239</sup> Some provisions of this statute are beyond the customary rule or other treaty rules.<sup>240</sup> It is Interesting that it is also written in the Statute that seven years after the entry into force of this Statute, which would be 1 July 2009, any amendment can be considered and possibly added to the present Statute, which “*may also include the list of crimes contained in Article 5*.”<sup>241</sup>

The ICTR Statute extended the jurisdiction: “*acts of terrorism as referred to in Additional Protocol II to the Geneva Conventions*”.<sup>242</sup> This would be intimidating for a civilian population in armed conflict, which doesn’t cover private terrorism against governments. The UN has in force one International Convention with a generic definition of terrorism, the International Convention for the Suppression of the Financing of Terrorism.

International law is insufficient at the enforcement level. Cassese denounces that neither national nor international courts have used the full potential that international legal rules offer for proceeding effectively against terrorism. The ICC has not yet granted jurisdiction over terrorist acts. Some States still prefer to use military violence instead of using international legal rules against terrorism.<sup>243</sup>

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<sup>236</sup> cited UNSC Resolution 1368 (2001)

<sup>237</sup> criminal act

<sup>238</sup> cp. Cassese 2003, p 129

<sup>239</sup> cited from the International Criminal Court Statute, Article 10, cp. Cassese 2006, p. 945

<sup>240</sup> cp. Cassese 2006, p. 945f

<sup>241</sup> cited from Article 123 of the Rome Statute, cp. Van Krieken 2002, p. 109

<sup>242</sup> cited, Article 4 ICTR Statute

<sup>243</sup> cp. Cassese 2003, p. 130f

## 2. Law Enforcement

Bianchi's opinion is that international law isn't equipped well enough to face the problems created by international terrorism. It is a fact, that some international treaties against terrorism have been ratified after a terrorist act. The international legal instruments against terrorism are an effective measure; therefore many States ratify, and this is also important for the development of customary international law. More important is the accurate interpretation of law. The interpretation of SC Resolutions can affect political issues. For example, the SC Resolution adopted on 12 of September 2001 gives the US the right of self-defence against Afghanistan. In fact, the right of self-defence is legitimized by Article VII of the UN Charter. The Security Council Resolution 1441 on Iraq led to different interpretations within the Permanent Five Member States of the Security Council. The interpretation of anti-terrorist instruments is important because there are other rules of international law (mostly of customary nature), which would be applicable against terrorist attacks. If an attack occurs, organized by an organization that sends out individuals or groups of individuals to attack another foreign State, it would count as an armed attack or act of aggression. States have the obligation not to give any support to individuals or groups of individuals who plan to harm the security of another State. Bianchi further points out, that international humanitarian law could have been applicable to the conflict in Afghanistan.<sup>244</sup>

The Security Council Resolutions play a main role in the States' obligation against terrorism. Any support or conduct of a State on international terrorism is unlawful. Security Council Resolutions which are based on the UN Charter require an expanded obligation of States to counter-terrorism. The Security Council is a political organ of the decision-making process in international politics.<sup>245</sup>

To fight international terrorism, or threats of international peace and security, the international community and the States have to take universal action to respond to this phenomenon. General agreed principles are often confronted with the sense of urgency to face global threats in an effective way. Acting promptly and universally are two main requirements for international law. Domestic legal systems are not facing these problems. But unfortunately, the decision-making process of the international community is not yet universally accepted and far from acting promptly and effectively. This is also one reason why the Security Council adopted its resolution 1373 with a legislative role. This resolution includes law-making characteristics as well as obligations also mentioned in the International

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<sup>244</sup> cp. Bianchi 2004, p. 491ff

<sup>245</sup> cp. Bianchi 2004, p. 498ff

Convention for the Suppression of the Financing of Terrorism. It also imposes the obligations for States to bring to justice people suspected of terrorist acts, to establish a criminal offence to counter-terrorism in each States domestic legal system and to provide mutual legal assistance for the prevention of terrorist acts and to support other States in criminal investigations. The capacity of the UN system of collective security and the legitimacy of the Security Council face, on the other hand, the consensus of the Member States.<sup>246</sup>

The balance between human rights and national security is unstable. This is also one inadequacy of international law. But what is impressive, are the applicable international law norms in a state of emergency. A good example of international cooperation can be seen by the treaties signed between the United States and the European Union in July 2003, about extradition and mutual legal assistance. These two are bilateral treaties on judicial cooperation. This was a great example of international cooperation. The United States and the European Union have different views of the international judicial and extradition aspects in their domestic laws. For example, the European Union Member States do not agree with extraditing suspects to the United States, where they can be sentenced to death. The European human rights law has been adopted by the *Additional Protocol Nr. 6 of the European Convention concerning the Abolition of the Death Penalty and of the Jurisprudence of the European Court of Human Rights*.<sup>247</sup> On the other hand, the United States complained about the extradition request of the European Union Member States because they did not agree. The new treaties are a compromise for both States. Therefore, it is allowed to request for extradition on the death penalty but it doesn't have to be carried out. Another interesting point is that terrorism is not mentioned in these treaties. Was it clear that an agreement on terrorism could not be achieved? Furthermore, have provisions been made on the investigation process, such as video-conferences for testimony or possession of information about bank accounts of suspected people? This example is one step in the right direction for international judicial cooperation.<sup>248</sup>

The basis of soft law on financing of terrorism the Financial Actions Task Force on Money Laundering (FATF) has to be mentioned. Since 2001 the FATF has the mandate on financing of terrorism and anti-money laundering. It has elaborated 8 special recommendations concerning the repression of terrorist financing. The States responses to these recommendations were very positive.<sup>249</sup> For example, the FATF International Cooperation Review group (ICRG) attended a meeting in Paris on 24<sup>th</sup> January 2008 with Iran in order to

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<sup>246</sup> cp. Bianchi 2004, p- 515ff

<sup>247</sup> cited Bianchi 2004, p. 527

<sup>248</sup> cp. Bianchi 2004, p. 525ff

<sup>249</sup> cp. Bianchi 2004, p. 528f

explain the work and background of the ICRG in general and how its process implicated Iran. The ICRG reviewed the jurisdictions and provided Iran and supplied them with the information and analysis of the ICRG. The Iranian government is concerned about the risk money laundering and terrorism financing affect the Iranian economy and financial system. During the analysis, the ICRG reached the agreement that money laundering offences are insufficient in Iran. And in order to criminalize terrorist financing, Iran doesn't have any criminal offences on that matter. ICRG suggested Iran submit further material provided by ICRG in order to fill gaps on money laundering and terrorism financing criminalization.<sup>250</sup>

Many areas of international law are affected by International terrorism. Terrorism is, on the one hand, motivated in different ways and criminalized by different norms. On the other hand it involves the international legal system as well as the domestic legal system. The normative framework of the national system is very extensive and different; therefore, the main points of international law are jurisdiction and regulation of the use of force. International humanitarian law provides standards for the treatment of individuals in armed conflicts. Law enforcement officers and decision-makers should have knowledge of the international legal issues and the technical assistance required in order providing *effectiveness of international legal norms at the domestic level*.<sup>251</sup>

A US perspective in response to September 11<sup>th</sup> <sup>252</sup>: The terrorist attacks of September 11<sup>th</sup> associated the US government's legal system with law enforcement and war. The global war on terrorism requires different instruments to protect national security, such as diplomatic instruments as well as military instruments. The United States has been fighting terrorism for years with law enforcement measures, but their strategy has changed and with September 11<sup>th</sup> it is clearly a war response to terrorism. William Lietzau, Lieutenant Colonel of the United States Marine Corps, mentioned the terrorist attacks of the Khobar Towers<sup>253</sup> when the United States launched a law enforcement investigation and this initiative led to the adoption of the Security Council Resolution of 1997, the International Convention for the Suppression of Terrorist Bombings. (Interesting here is that the United States signed this resolution after September 11<sup>th</sup>, but it could have been applicable to the attacks of September 11<sup>th</sup> <sup>254</sup>.) The most criticized use of force nationally and internationally was the military response to these terrorist attacks in the United States. For Lietzau, law enforcement to counter-terrorism was

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<sup>250</sup> cp. FATF/ICRG(2008) Summary Report of the Meeting with Iran

<sup>251</sup> cited Bianchi 2004, p. 533

<sup>252</sup> this perspective is personal from William Lietzau and not necessarily the perspective of the United States itself or the United States Marine Corps. (This article has been used for this present paper to show a controversial opinion of this sensitive topic about terrorism.)

<sup>253</sup> House complex in Khobar, Saudi Arabia in 1996. Members of the Hizballah Al-Hijaz were identified for this act by the United States

<sup>254</sup> cp. Bianchi 2004, p. 495



insufficient and the use of military force has become the only legitimate and necessary option. For Lietzau terrorist acts are acts of war.<sup>255</sup> On September 12<sup>th</sup> the UN adopted a Resolution to give the United States the right to self-defence. Lietzau points out that the nature of terrorism leads to the right of pre-emptive action to prevent future attacks and it is now accepted in self-defence measures.<sup>256</sup> Terrorist attacks are not characterized under international law and even the Geneva Convention speaks about “internal armed conflicts”. Lietzau also mentioned that the Taliban wasn’t included in the definition of the Geneva Convention’s right of prisoners.<sup>257</sup>

### 3. Security vs. Liberty?

Human rights are threatened by international terrorism. But terrorist threats also limit privacy and freedom of press and opinion in order to guarantee more security. How far this security process can go should be limited by legal systems. According to Article 8 of the European Convention on Human Rights and other international human rights documents, everyone has the right to privacy. The American Constitution, on the contrary, doesn’t include a full right to privacy; it is limited by the United States Supreme Court. The European Court of Human Rights doesn’t allow the gathering of information of an individuals’ private life under the right of privacy. Personal data has to be respected. It also protects against the gathering of information by the State.<sup>258</sup>

Terrorism needs the media in order to send its messages into the world. Restrictions on the freedom of press and opinion are therefore necessary to fight against terrorism. Article 10 of the European Convention of Human Rights provides this right to freedom of expression, press and opinion. Freedom of Assembly in order to advance political ideas is similar to freedom of expression. Limitations have to be made by groups of terrorists that want to promote their political aims by violent measures.<sup>259</sup>

Jochen Frowein: *“It is beyond doubt that measures of secret surveillance are interferences with the right to private life under Article 8 of the European Convention and similar provisions in other treaties or constitutions.”*<sup>260</sup>

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<sup>255</sup> cp. Lietzau 2002, p. 36ff

<sup>256</sup> cp. Lietzau 2002, p. 41

<sup>257</sup> cp. Lietzau 2002, p. 42ff

<sup>258</sup> cp. Krieger 2004, p. 51ff

<sup>259</sup> cp. Krieger 2004, p. 70ff

<sup>260</sup> cited Frowein 2004, p. 74

The limitations of privacy or freedom of press or opinion should not be in conflict with more security.<sup>261</sup>

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<sup>261</sup> cp. Krieger 2004, p. 72

### III. Part – Empirical Part

#### A. Terrorism Prevention in the United Nations

Terrorism is a challenge to the international community and a main problem for the United Nations. The values of the UN are jeopardised through international terrorism, i.e. rule of law, human rights, civilians and tolerance among people. But above all, it threatens international security and peace. Terrorism is a complex system as we saw in the former chapters concerning its definition, and it being a changing phenomenon. Within the UN one aim is to condemn the motivation, financing, methods and mechanisms of terrorism. Terrorism is a global problem and no State can deal with it alone. It is now the UN that wants to find effective criminal justice responses to counter-terrorism. The universal legal instrument will be necessary to fulfil this aim effectively. A strong criminal justice approach conducted by a legal framework that respects the rule of law and human rights requires a stronger national criminal justice system to justify perpetrators, and in certain case, extradite them to another State.<sup>262</sup>

To establish a strong global criminal justice system the universal legal framework against terrorism has 16 Conventions and Protocols which cover different acts of terrorism. But several Security Council Resolutions such as 1267 (1999) and 1373 (2001), also make up the universal legal regime on counter-terrorism.<sup>263</sup>

##### 1. 16 Conventions and Protocols related to terrorism

From 1963 to 1999 the UN adopted 12 universal instruments to prevent and suppress international terrorism. Here is a listing<sup>264</sup> with the numbers (numbers of countries) of the ratification status<sup>265</sup> of each convention and protocol.

1	Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963)	183
2	Convention for the Suppression of Unlawful Seizure of Aircraft (1970)	182

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<sup>262</sup> cp. TPB Brochure, p. 1

<sup>263</sup> cp. TPB Brochure, p. 1

<sup>264</sup> cp. The universal instruments against terrorism, UNODC,

<sup>265</sup> cp. TPB Brochure, p. 15f

3	Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971)	185
4	Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons (1973)	166
5	International Convention Against the Taking of Hostages (1979)	164
6	Convention on the Physical Protection of Nuclear Material (1979)	129
7	Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988)	161
8	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988)	146
9	Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988)	134
10	Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991)	137
11	International Convention for the Suppression of Terrorist Bombings (1997)	153
12	International Convention for the Suppression of the Financing of Terrorism (1999)	160

In 2005 the General Assembly adopted amendments of these universal instruments:

13	International Convention for the Suppression of Acts of Nuclear Terrorism	29
14	Amendment to the Convention on the Physical Protection of Nuclear Material	13
15	Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and	3
16	Protocol of 2005 to the Protocol for the Suppression of	0

	Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.	
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These instruments are the main parts of the work of the UN on counter-terrorism measures. Every convention was formed from a specific terrorism threat covering acts of terrorism, of the hijacking of aircrafts; aviation sabotage; violence at airports; against the safety of maritime navigation; against the safety of fixed platforms located on the continental shelf; against internationally protected persons, including diplomats; unlawful taking and possession of nuclear material; taking of hostages; terrorist bombings; funding and supporting the commission of terrorist acts and terrorist organizations and nuclear terrorism.<sup>266</sup> The ratification and implementation of those universal instruments is an urgent priority for the UN to prevent terrorism. In the Security Council Resolution 1373 from 2001 the UN calls upon all member States to implement and ratify the relevant instruments to increase the cooperation on counter-terrorism measures. In 2003 UNODC focused on ratification assistance and until December 2007, 98 States are parties in the first 12 instruments. Before 2003 only 26 States had ratified the universal instruments.<sup>267</sup>

The International Convention for the Suppression of Acts of Nuclear Terrorism from 2005, has been established with different organizations. Nuclear terrorism hasn't been defined as of yet, only specific criminal conduct.<sup>268</sup>

## 2. Security Council Resolutions on Counter-Terrorism

Besides these legal instruments the UN has launched a series of Security Council Resolutions related to terrorism under Chapter VII of the UN Charter. The most common one is Security Council Resolution 1373 which was adopted right after the terror attacks in the United States on September 11<sup>th</sup> of 2001. This resolution calls upon all Member States to fulfill their obligation of counter-terrorism by provisions such as the freezing of the financial assets of terrorists and all their supporters, denying them travel and safe haven and preventing terrorist recruitment. It also calls upon to the Member States to assist one another in investigating and prosecuting terrorist attacks and sign and ratify the legal universal instruments, i.e. the Conventions and Protocols, as mentioned above in the table.<sup>269</sup>

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<sup>266</sup> cp. TPB Brochure, p. 2

<sup>267</sup> cp. TPB Brochure, p. 2

<sup>268</sup> TPB Presentation on delivering technical assistance for strengthening the legal regime against terrorism from 28 February 2008

<sup>269</sup> cp. TPB Brochure, p. 3

The Counter-Terrorism Committee (CTC), was established to facilitate the implementation of the issues mentioned in the Security Council Resolution 1373. The Security Council Resolution 1535 (2004) was adopted to create the Counter-Terrorism Executive Directorate (CTED), which is also an instrument to research the measures on counter-terrorism. Follow up Security Council Resolutions after 1373 and also related to terrorism are: 1456 (2003), 1535 (2004), 1540 (2004) and 1566 (2004). Security Council Resolution 1267 (1999) deals with the implementation of sanctions to the Taliban and Al-Qaida, including the freezing of assets, arms embargo and travel ban. The 1267 Resolution has been followed up by Security Council Resolutions 1333 (2000), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005) and 1735 (2006).<sup>270</sup>

Here is a list on all relevant Security Council Resolutions related to terrorism:

#### **Threats to International Peace and Security caused by Terrorist Acts:**

S/RES/1269 (1999)	On international cooperation in the fight against terrorism
S/RES/1373 (2001)*	On international cooperation to combat threats to international peace and security caused by terrorist acts
S/RES/1535 (2004)	Creation of the Counter-Terrorism Executive Directorate (CTED)
S/RES/1566 (2004)*	Descriptions of acts of terrorism aimed at protecting civilians; establishment of a working group for the identification of terrorist entities and groups not associated with the Taliban; creation of an international fund to compensate victims of terrorist acts.

#### **Security Council Resolutions on Measures against Al-Qaida, Osama Bin Laden and the Taliban:**

S/RES/1267 (1999)*	On measures against the Taliban
S/RES/1333 (2000)*	On measures against the Taliban
S/RES/1363 (2001)*	On the establishment of a mechanism to monitor the implementation of measures imposed by Resolution 1267 (1999) and 1333 (2000)
S/RES/1390 (2002)*	On the extension of measures against the Taliban to Al- Qaida and

<sup>270</sup> cp. TPB Brochure, p. 3

	Osama Bin Laden
S/RES/1452 (2002)*	On implementation of measures imposed by paragraph 4 (b) of Resolution 1267 (1999) and paragraph 1 and 2 (a) of Resolution 1390 (2002)
S/RES/1455 (2003)*	On improving implementation of measures imposed by paragraph 4 (c) of Resolution 1267 (1999), paragraph 8 (c) of Resolution 1333 (2000) and paragraph 1 and 2 of Resolution 1390 (2002) on measures against the Taliban and Al-Qaida
S/RES/ 1526 (2004)*	Creation of the Monitoring Team
S/RES/1617 (2005)*	1267 Committee Checklist
S/RES/1699 (2006)	General issues relating to sanctions (Cooperation between INTERPOL and the 1267 Committee)
S/RES/1730 (2006)	General issues relating to sanctions (de-listing procedure)
S/RES/1735 (2006)*	Establishment of a Focal point for the Listing and De-listing Procedure

**Security Council Resolution on International Human Rights, Refugee and Humanitarian Law:**

S/RES/1456 (2003)	Declaration on the issue of combating terrorism
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**Security Council Resolution on non-acquisition of weapons of mass destruction for terrorist purposes:**

S/RES/1540 (2004)	Non-acquisition of weapons of mass destruction; their means of delivery and related materials by non State actors for terrorist purposes
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**Security Council Resolution on Incitement to Commit Terrorist Acts:**

S/RES/1624 (2005)	On Incitement to Commit Terrorist Acts
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\* Those SC Resolutions (to international peace and security), are legally bound by Chapter VII of the UN Charter.<sup>271</sup>

### 3. The Work of the United Nations Office on Drugs and Crime (UNODC)

The United Nations Office on Drugs and Crime (UNODC) fights globally against illicit drugs and international crime. Since the joining of the United Nations Drug Control Programme with the Centre for International Crime Prevention in 1997, the UNODC works globally through their field offices around the world with voluntary contributions (90% of the Budget), mainly from governments.<sup>272</sup> The Office's legal services are drug control, transnational organized crime, anti-money laundering and human trafficking, corruption and terrorism prevention. The main provisions are on crime prevention, criminal justice and rule of law issues and a special provision in international cooperation in criminal matters, for example, extradition and mutual legal assistance. Another important work is carried out in the field.<sup>273</sup>

Three pillars of the work of UNODC:

- It provides field based international cooperation projects to counter illicit drugs, crime and terrorism.
- It increases the knowledge on drugs and crime issues by research and analysis and expands operational decisions.
- It provides legal work to assist in ratifying and implementing international treaties <sup>274</sup>

UNODC has been fighting against international terrorism for many years, but since 2002 the General Assembly has given the Terrorism Prevention Branch of the UNODC a special mandate to prevent terrorism. The expanded programme provides the Member States with special provisions on assistance upon request, in legal aspects on counter-terrorism, especially in ratifying and implementing the international legal instruments on counter-terrorism, in strengthening their national State capacity on criminal justice with special trainings of judges, prosecutors and criminal officers according to rule of law and human rights principles.<sup>275</sup>

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<sup>271</sup> the table of the SC Resolutions related to terrorism, see also UNODC Brochure on Security Council Resolutions relevant to the fight against terrorism of the Terrorism Prevention Branch (TPB/UNODC)

<sup>272</sup> cp. <http://www.unodc.org/unodc/en/about-unodc/index.html>

<sup>273</sup> cp. TPB Brochure, p. 6

<sup>274</sup> cp. <http://www.unodc.org/unodc/en/about-unodc/index.html>

<sup>275</sup> cp. TPB Brochure, p 4



The framework of UNODC in 2008-2009 will be to assist States in implementing and ratifying the international legal instruments and to give technical assistance on issues related to drug control, crime and terrorism prevention. By 2011, the aim is to make crime response more effective by facilitating the implementation and strengthening the rule of law. The ratification and implementation of the conventions and protocols, as well as the international cooperation in criminal justice matters and terrorism prevention, are a main issue of UNODC.<sup>276</sup>

In January 2003 UNODC launched a global project on “Strengthening the Legal Regime against Terrorism” which had 4 main objectives. Ratification of the universal legal instruments on terrorism prevention; strengthen the national capacity to apply domestic legislation against terrorism; improve international cooperation in criminal matters, especially for terrorism; and to enhance cooperation among regional, sub-regional and international Organizations on counter-terrorism.<sup>277</sup>

## **4. Terrorism Prevention Branch**

### **a) TPB mandate**

On 1 January 1998 the Secretary General set up the Terrorism Prevention Branch within the Office for Drug Control and Crime Prevention (now UN Office on Drugs and Crime). In the Vienna Declaration on Crime and Justice a Plan of Action against Terrorism was elaborated, which was before September 11<sup>th</sup>. Further actions were taken by the “Symposium on Combating International Terrorism: the Contribution of the United Nations”, which was held in June 2002 with the participation of more than 100 countries.<sup>278</sup>

Since 2002, the Terrorism Prevention Branch is mandated from the General Assembly to provide Member States, upon request, assistance on a legal basis to fight terrorism; to give technical assistance in ratifying and implementing the universal legal instruments, (i.e. 16 Conventions and Protocols); to strengthen the national capacity in the criminal justice system; to give substantial input on counter-terrorism matters to intergovernmental bodies; among other entities such as the General Assembly, the Economic and Social Council, the Commission on Crime Prevention and Criminal Justice and the United Nations Congresses on Crime Prevention and Criminal Justice. TPB coordinates its work with other UN entities

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<sup>276</sup> cp. TPB Brochure, p. 6

<sup>277</sup> cp. TPB Brochure, p. 7

<sup>278</sup> cp. JP Laborde, SOS Attentats 2003, p. 69f

and also takes initiatives from the UN Secretariat on counter-terrorism measures.<sup>279</sup> The legal service UNODC provided for terrorism prevention is made through TPB.

The Terrorism Prevention Branch (TPB) from the United Nations Office on Drugs and Crime (UNODC) is the only entity delivering technical assistance to States on a legal basis on counter-terrorism.<sup>280</sup>

## **b) TPB's relevant General Assembly and Economic and Social Council Resolutions**

Here is a list of relevant General Assembly (GA) Resolutions and Economic and Social Council (ECOSOC) Resolutions relevant for TPB.<sup>281</sup>

62/172	Technical assistance for implementing the international conventions and protocol on counter-terrorism
62/175, 61/181, 60/175, 59/159, 58/140, 57/173, 56/123 and 52/90	Strengthening the UN Crime Prevention and Criminal Justice Programme and technical cooperation capacity
62/71, 61/40, 60/43, 59/46 and 58/81	Measures to eliminate international terrorism
60/288	UN Global Counter-Terrorism Strategy
60/177	Follow up to the 11 <sup>th</sup> UN Congress on Crime Prevention and Criminal Justice
59/153 and 58/136	Strengthen international cooperation and technical assistance for the implementation of the universal conventions and protocols on counter-terrorism within the legal framework of UNODC
57/292	Relating the programme budget for the biennium 2002-2003
57/170	Follow up plan for the implementation of the Vienna Declaration on Crime and Justice; the Challenge of the 21 Century
56/261	Plans of action for the implementation of the Vienna Declaration on

<sup>279</sup> cited TPB Brochure, p. 4

<sup>280</sup> cp. TPB Brochure, p. 6

<sup>281</sup> cp. TPB Brochure, p. 17f

	Crime and Justice
56/253	Relating the proposed programme budget for the biennium 2002-2003
55/59	Vienna Declaration on Crime and Justice

ECOSOC Resolutions related to terrorism:

2005/19	Strengthening international cooperation and technical assistance in promoting the implementation of the universal conventions and protocols related to terrorism within UNODC's framework.
2002/19	Strengthening international cooperation and technical assistance within the framework of the activities of the Centre for International Crime Prevention in preventing and combating terrorism

In 2005, the General Assembly adopted a resolution 60/1 to combat terrorism with the support of national and regional capacity of States. In his report, A/60/825, "Uniting against Terrorism", the Secretary-General recommended a global strategy on counter-terrorist measures. Therefore, the General Assembly adopted the Resolution 60/288 which is also called the "United Nations Global Counter-Terrorism Strategy".<sup>282</sup> (see part III, chapter A, 5).

General Assembly Resolution 62/172 requests to intensify technical assistance with Member States and strengthen international cooperation to prevent terrorism. Furthermore, it requests more coordination with the "Counter-terrorism Committee" (CTC), the "Counter-terrorism Committee Executive Directorate" (CTED) and the "Counter-Terrorism Implementation Task Force" (CTITF), in order to strengthen national capacity in the national criminal justice system and to continue the cooperation with international, regional and sub-regional organizations and other related entities of the UN to increase good practice and legal training on counter-terrorism.<sup>283</sup>

Recent developments in policy issues within the TPB are General Assembly Resolutions of 2007. The 62/172 Resolution initiated by the Crime Commission, the 62/175 and the 62/71 Resolution.<sup>284</sup>

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<sup>282</sup> cp. TPB Brochure, p. 3

<sup>283</sup> cp. TPB Brochure, p. 5

<sup>284</sup> TPB Presentation on delivering technical assistance for strengthening the legal regime against terrorism from 28 February 2008

Article 6 of the GA Resolution 62/172, *“the United Nations Office on Drugs and Crime, in coordination with the Counter-Terrorism Committee and its Executive Directorate, to continue to work with international Organizations and relevant entities of the United Nations system, as well as with regional and sub-regional Organizations, in the delivery of technical assistance, whenever appropriate and within its mandate, specifically to enhance legal cooperation, good practices and legal training in the area of counterterrorism.”*<sup>285</sup>

GA Resolution 62/175 requests to strengthen international cooperation in preventing terrorism by ratifying and implementing the universal legal instruments (conventions and protocols relevant for terrorism), and to contribute the work of the Counter-Terrorism Implementation Task Force and the CTC and CTED.

GA Resolution 62/71 requests TPB to continue the efforts taken on counter-terrorism and applies to the Security Council Resolution 1373 (2001) and to the Member States to become party of this SC Resolution.<sup>286</sup>

The new General Assembly Resolutions articulate once again the TPB mandate in providing legislative incorporation, ratification and support criminal justice systems of the States to implement the universal legal instruments against terrorism. The work TPB is offering is guided by the General Assembly, the Security Council and the Crime Commission. The technical assistance the UNODC provides is upon countries requests. In technical assistance, the rule of law, international cooperation in criminal matters, international law and anti-money laundering, have to be respected. Key components for implementing the universal legal regimes on counter-terrorism, are the complete ratification of the instruments, the legislative incorporation in national law, protect human rights and rule of law principles, to strengthen criminal justice systems.<sup>287</sup>

### **c) Technical Assistance on Counter-Terrorism**

Between January 2003 and December 2007 technical assistance on counter-terrorism on a legal basis was provided to 150 States; 115 States received direct assistance and consultations through “missions” in their States, and the rest received assistance through 47 sub-regional and regional workshops. Moreover, about 6,100 national officials received

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<sup>285</sup> cited GA Resolution 62/172, Article 6

<sup>286</sup> cp. TPB Brochure, p. 5

<sup>287</sup> cp. TPB Presentation on delivering technical assistance for strengthening the legal regime against terrorism on 28 February 2008

training on how to ratify and implement the relevant instruments on counter-terrorism.<sup>288</sup> Where and how the projects and “missions” will take place, depend on the geographical status of the States and the content of the assistance. Projects and missions include assistance to incorporate the universal legal instruments into national legislation; to strengthen the international cooperation to fight terrorism; advice in requests for extradition and mutual legal assistance; provide training for national criminal justice officials on new legislation and development of the technical assistance tools, i.e. conventions and protocols.<sup>289</sup>

In fact, there are three different kinds of technical assistance offered<sup>290</sup>:

- 1.) In case Member States request technical assistance, TPB provides direct national assistance. TPB is in close consultation with the requesting State officials. Member States are obligated to submit a national report on the different SC and GA Resolutions to the CTC, as it is stated in the SC Resolution 1373 (2001). TPB analyses the national legislation system on counter-terrorism, identifies the gaps of the legislation system and recommends the necessary measures to be undertaken for the implementation of national legislation. It also provides training for criminal justice officials, such as judges and prosecutors. TPB stands ready to support in case of an implementation of a new law or if there is a need of extradition or mutual legal assistance.
- 2.) Another form of legal assistance is the sub-regional and regional technical assistance. This form of workshop is effective because of the increase in international cooperation and also because of the political support and measures initiated on a national level for combating terrorism. The officials responsible are able to identify their States needs and there is a positive affect in the exchange of work experiences.
- 3.) Several TPB publications and technical assistance tools are supportive measures for States on counter-terrorism basis.

The focus on the technical assistance in former years, has been on the ratification and implementation of the universal legal instruments against terrorism and assistance to strengthen national criminal justice systems. Very important at this point, are adequate long term follow up activities to ensure stability against terrorism.<sup>291</sup>

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<sup>288</sup> cp. TPB Brochure, p. 7

<sup>289</sup> cp. TPB Brochure, p. 7

<sup>290</sup> cp. TPB Brochure, p. 8

<sup>291</sup> cp. TPB Brochure, p. 8

#### **d) Partners and Donors of the Terrorism Prevention Branch**

Partnerships are valuable in the fight against terrorism and it is another important aspect of the work of TPB. To avoid duplication in efforts, TPB is working closely with their partners. Technical assistance is undertaken in cooperation with different partners and regional, sub-regional or international Organizations to complement the work of the UN with their work. Among other things, in questions of legal expertise their help is appreciated. TPB collaborates with partners such as:

The international Civil Aviation Organization; the World Bank; the International Monetary Fund; the International Maritime Organization; the International Organization for Migration; the African Union; the Commonwealth Secretariat; the Counter-Terrorism Action Group of the Group of Eight; the Economic Community of Central African States; the Economic Community of West African States; the Financial Action Task Force on Money Laundering; the International Organization of la Francophonie; Interpol; the International Development Law Organization; the League of Arab States; the North Atlantic Treaty Organization; the Organization for Security and Cooperation in Europe; the Organization of American States; the Organization of the Islamic Conference; the Pacific Islands Forum Secretariat; the Southern African Development Community; the Intergovernmental Authority for Development; the Association of Regional Magistrates of Southern Africa and the Terrorism Working Group of the European Union.<sup>292</sup>

Besides the usual budget of the UN, which is approved by the General Assembly and voluntary contributions by Member States, the Terrorism Prevention Branch gets its financial resources by voluntary donor support from countries. The costs of delivering technical assistance are financed by those donor countries, which have been increasing because of the growing confidence in the effective work against terrorism. In January 2008 the financial aid of donors totalled \$ 22.5 million by the following countries: Austria, Canada, Colombia, Denmark, France, Germany, Greece, Italy, Japan, Liechtenstein, Monaco, Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland and the United States of America.<sup>293</sup> In addition to the supports of donors, countries supported TPB with in kind contributions.

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<sup>292</sup> cp. TPB Brochure, p. 10

<sup>293</sup> cp. TPB Brochure, p. 11

## **e) Financing of TPB**

The usual budget of the UN includes about \$ 1 million per year. It has to cover 7 staff positions and expert groups, consultants and travel.<sup>294</sup> \$ 9 million is the required minimum of annual voluntary contributions to keep technical assistance activities up to the required standards of the UN Global Counter-Terrorism Strategy. The required resources of the Headquarters and of the 20 field offices, pulls together the know how of TPB in different areas such as prosecution, judiciary and legislation systems, crime prevention and criminal justice.<sup>295</sup>

## **f) Field work of TPB**

TPB staff members, experts, consultants, individual contractors and other TPB members are working out of the TPB Headquarters in Vienna. Besides the HQ there are several regional and sub-regional TPB members working in UNODC field offices. The field presence of TPB provides technical assistance by regional experts all around the world. In South-East Asia and the Pacific, Central Asia, the Commonwealth of Independent States, Eastern Europe, Northern Africa and the Middle East, Southern Africa, Western and Central Africa, Eastern Africa and Latin America and the Caribbean. The field experts provide national and sub-regional input to facilitate follow up activities on counter-terrorism measures taken by TPB in each region.<sup>296</sup>

Through its website, TPB offers easy access to its work and other information about its work. A special counter-terrorism legislative database opens and facilitates the access to important information on ratification status of each Member State. The transparency of the work is important for TPB; therefore, it provides periodic financial programmes, implementation reports to donors and periodic briefings for Member States.<sup>297</sup>

## **g) TPB from 2003-2007, numbers and facts**

In January 2003 when TPB started with providing Member States with technical assistance, only 26 States had ratified the first 12 universal legal instruments. In December 2007 98 States signed the 16 universal legal instruments. All together since 2002, there have been 398 ratifications of all anti-terrorism instruments provided by the UN made by Member

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<sup>294</sup> cp. TPB Brochure, p. 11

<sup>295</sup> cp. TPB Brochure, p. 11

<sup>296</sup> cp. TPB Brochure, p. 10

<sup>297</sup> cp. TPB Brochure, p. 11

States. In 100 countries the national criminal justice system has been strengthened by training more than 6,100 criminal justice officials from several countries.<sup>298</sup>

The outcome of the work of the Terrorism Prevention Branch were 398 new ratifications of the universal legal instruments against terrorism until 2007, ratified by States where TPB assisted. In the year 2007 there have been 43 new ratifications. The challenges TPB is facing in the future are effective follow up assistance, increasing numbers of countries requesting technical assistance, specialized service on special aspects, coordinating globally and finding regional partnerships. All these challenges require increased funding. TPB Global Project for 2008 requires about 9 million dollar contributions. In 2007 there were 38 experts working with the Terrorism Prevention Branch; 18 in the Headquarters and 20 in the field.<sup>299</sup>

As of 1 January 2008 the highest voluntary contribution for the work of the Terrorism Prevention Branch has come from Sweden with \$ 2,627,952. But also Italy, UK and Denmark supported more than \$ 2 million.<sup>300</sup>

#### **h) Evaluation of technical assistance**

UNODC and the UN Secretariat are evaluating and auditing the technical assistance TPB is providing Member States with. The Office of Internal Oversight Services of the Secretariat is working on a periodic programme of evaluation and internal audits. External audits will be made by the UN Board of Auditors. TPB is also self-evaluating technical assistance activities to Member States. The evaluation made in 2006 by the Independent Evaluation Unit of UNODC, showed that the technical assistance TPB is providing on counter-terrorism is extremely useful.<sup>301</sup>

### **5. United Nations Global Counter-Terrorism Strategy**

It calls upon the member States to strengthen the global fight against terrorism and to retain rule of law and human rights. Its main objectives are measures to prevent terrorism, to curb the spread of terrorism, strengthen a States capacity to combat terrorism, to strengthen the role of the UN and to ensure the respect of human rights and rule of law.<sup>302</sup> In this strategy the work of TPB is defined and it encourages UNODC to enhance technical assistance to

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<sup>298</sup> cp. TPB Brochure, p. 13

<sup>299</sup> cp. TPB Presentation on delivering technical assistance for strengthening the legal regime against terrorism from 28 February 2008

<sup>300</sup> cp. TPB Brochure, p. 31

<sup>301</sup> cp. TPB Brochure, p. 13

<sup>302</sup> cp. TPB Brochure, p. 4



Member States. It also calls upon States to resort to technical assistance. UN General Assembly Global Counter-Terrorism Strategy (A/60/288) *“encourages the United Nations Office on Drugs and Crime, including its Terrorism Prevention Branch, to enhance, in close consultation with the Counter-Terrorism Committee and its Executive Directorate, its provision of technical assistance to States, upon request, to facilitate the implementation of the international conventions and protocols related to the prevention and suppression of terrorism and relevant United Nations resolutions.”*<sup>303</sup>

This Strategy identifies 5 main measures. (1) Measures to address the spread of terrorism; (2) Measures to prevent and fight terrorism; (3) Measures to strengthen the role of the UN in the fight against terrorism and States capacity; and (4) Measures to ensure rule of law and human rights principles.<sup>304</sup>

On 17-18 May 2007, the Symposium on Advancing the Implementation of the United Nations Global Counter-Terrorism Strategy took place in the Vienna International Centre in Austria, with 350 participants from 107 Member States. It was hosted by the Government of Austria in cooperation with the Executive Office of the Secretary-General and the United Nations Office on Drugs and Crime. The purpose of the Symposium was to publish the UN Global Counter-Terrorism Strategy. This symposium was composed of the approach used by the UN Strategy to counter-terrorism, implementing measures to prevent and combat terrorism, increase States' capacity, respect human rights and advancing the implementation of this strategy.<sup>305</sup>

All countries (192 Member States) of the UN agreed to this strategy to combat global terrorism. The important aims of this strategy are a successful implementation as well as a better cooperation among international organizations and Member States. The Counter-Terrorism Implementation Task Force ensures the coordination of the strategy. The United Nations Office on Drugs and Crime is the only UN body mandated to counter-terrorism. This is the result of technical assistance to Member States. It is important to address terrorism before taking appropriate counter measures. The field offices all over the world are the main support in providing technical assistance to Member States and therefore, implementing the UN Global Counter-Terrorism Strategy. Even though a lot of countries ratified the universal legal instruments on counter-terrorism, the work of UNODC is not done. Because some countries need new laws or old ones have to be revised. It is very important to keep criminal

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<sup>303</sup> cited UN Global Counter-terrorism Strategy, Article 7, Annex No III

<sup>304</sup> cp. Counter-terrorism Implementation Task Force Document of January 2008

<sup>305</sup> cp. UN Brochure: Symposium on Advancing the Implementation of the UN Global Counter-Terrorism Strategy, 2007, p. ix

justice strategies updated (see part III, chapter C). In this strategy the UN is looking to expand preventive counter-terrorism work as well as facilitate extradition and mutual legal assistance; identify and promote good legal criminal justice practices on counter-terrorism; include analyses on counter-terrorism; train countries on the legal aspects of counter-terrorism and deliver technical assistance to Member States. Because of the massive work mentioned, UNODC relies on the work of cooperation of Member States and requires the help of partnerships, such as OSCE or OAS, etc (see part III, chapter A, 4, d). An important step has already been taken as there has been a commitment of Member States to implement the UN Global Counter-Terrorism Strategy, but now the next step will be to put into action the words written in this strategy, which include more than 50 practical recommendations.<sup>306</sup>

### **a) Member States comments on the UN Global Counter-Terrorism Strategy**

This chapter is just to give a few examples of different countries opinions on the UN Global Counter-Terrorism Strategy. The Strategy is one standard norm of the UN in response to terrorism. The General Assembly and other relevant UN agencies have adopted a lot of instruments to counter-terrorism and the universal legal instruments are one big part of these instruments. They are based on bringing to trial suspects of terrorist acts by national governments or extradite them to countries willing to bring them to trial (principle *aut dedere, aut judicare* – extradite or prosecute).<sup>307</sup> The foreign minister of Costa Rica points out that we should avoid trying to find a general political definition of the notion of terrorism, that the legal definition is more important. In his opinion it would be more advantageous to define what is not included in the legal scope of terrorism legislation. He requires a more technical definition like the one made in the Draft Comprehensive Convention on International Terrorism. The definition made in this convention is still in progress “A *Person’s unlawfully and internationally causing or threatening to cause violence by means or firearms, weapons, explosives, any lethal devices or dangerous substances, which results, or is likely to result, in death or serious bodily injury to a person, a group of persons or serious damage to property, whether for public use, a State or Government facility, a public transportation system or an infrastructure facility. [...] it also includes attempt to commit such an offence, participate as an accomplice in the commission of such an offence, or in organizing or directing others to*

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<sup>306</sup> cp. UN Brochure: Symposium on the Advancing the Implementation of the UN Global Counter-Terrorism Strategy, p. xiff, Speeches of Ms Maria Berger, Minister of Justice of Austria and Mr. Antonio Maria Costa, Executive Director of the UNODC

<sup>307</sup> cp. UN Brochure: Symposium 2007, p. 3, Mr. Bruno Stagno Ugarte, Minister of Foreign Affairs and Worship of Costa Rica

*commit such an offence [...]*<sup>308</sup> The main reason why this convention is not yet adopted is because of the lack of agreement made on “armed forces” and if they should be exempted from the definition since they belong to international humanitarian law. Another point is armed resistance groups in struggles against colonial domination and the occupation of foreigners.<sup>309</sup> The foreign minister of Costa Rica also points out the importance of the rule of law and human rights principles. He welcomes the implementation of the UN Global Counter-Terrorism Strategy and the work of the UN Counter-Terrorism Implementation Task Force, but still thinks that it is too insufficient. Another problem he sees is that there are different UN staff bodies working on counter-terrorism and this can provoke an overlapping of the different bodies.<sup>310</sup> Also the Egypt Deputy Assistant Foreign Minister for Counter-Terrorism, Mr. Ashraf Mohsen, agrees that there are too many organs working on counter-terrorism, and he also points out that the definition of terrorism is the main part of the work, not the criminalization of terrorism. What is interesting here, is that the Deputy Foreign Minister doesn't make any difference between terrorists and freedom fighters. Furthermore, he mentions that the Arab States warned first about the danger of terrorists, which were called “political opposition” at that time. Terrorism is not decreasing, it is increasing. Understanding between different cultures, religions and the respect of human rights are also important issues on counter-terrorism. The work of the Task Force in his opinion should increase and also the work with the experience of countries fighting against terrorism. Finally, he points out that terrorism cannot be fought by conventions or protocols and that we need to increase international cooperation to prevail terrorism.<sup>311</sup> Mr. Ali Asghar Soltanieh, Permanent Representative of the Islamic Republic of Iran to the United Nations in Vienna, points out that terrorist attacks are escalating in different parts of the world and that ethnic and armed conflicts are closely linked to terrorism. It is important to take international action to stop terrorist attacks and save thousands of lives, including innocent children. He delineates that some terrorist groups such as MKO<sup>312</sup> has been supported by western countries and Saddam Hussein and also acted outside of Iran. The biggest danger he sees in State terrorism and the most effective way to prevent and combat terrorism is through the international community. In his opinion, excluding struggles of liberation movements is not a good idea because this would increase the risk of an escalation of violent acts, therefore a

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<sup>308</sup> cited Draft Comprehensive Convention on International Terrorism, see:

<http://cns.miis.edu/pubs/inven/pdfs/intlterr.pdf>

<sup>309</sup> cp. <http://www.un.org/News/Press/docs/2005/ga13292.doc.htm>

<sup>310</sup> cp. UN Brochure: Symposium on the Advancing of Implementation of the UN Global Counter-Terrorism Strategy, p. 3ff, Mr. Bruno Stagno Ugarte, Minister of Foreign Affairs and Worship of Costa Rica

<sup>311</sup> cp. UN Brochure: Symposium on the Advancing of Implementation of the UN Global Counter-Terrorism Strategy, p. 69ff, Mr. Ashraf Mohsen, Deputy Assistant Foreign Minister of Counter-Terrorism of Egypt

<sup>312</sup> Mujahedin-e Khalq Organization MOK or MEK; this terrorist group was allied with the Iraq under Saddam Hussein, see: <http://www.globalsecurity.org/military/world/para/mek.htm>

definition of terrorism has to be different from resistant groups of liberation movements.<sup>313</sup> Mr. Gregory L. Schulte, Permanent Representative of the United States of America to the United Nations, starts this speech with the US financial contribution of 2 million dollars over the last 2 years to UNODC and TPB (and other global programmes on money laundering) in the fight against terrorism because of their great and important work. He points out the impressive work of TPB on practical assistance to Member States therefore supporting them to ratify and implement the international legal instruments in their domestic legislation. Furthermore, he mentions that the Task Force should ensure that the General Assembly and the Security Council combine their work and cooperate in the fight against terrorism.<sup>314</sup> It is the clear opinion of Member States that international cooperation from Member States is needed to combat terrorism. Technical assistance made by the Terrorism Prevention Branch can help to implement international resolutions and instruments on counter-terrorism. The Counter-Terrorism Implementation Task Force is an instrument used in the process of technical assistance and it cannot replace UN instruments because it is complementary to counter-terrorism.<sup>315</sup> The UN Global Counter-Terrorism Strategy is the first instrument universally agreed upon to counter-terrorism. To further the implementation of this strategy is a challenge for all countries. The Member States now are responsible for the successful implementation of this strategy and this should be motivating and proactive in combating the international threat of terrorism.<sup>316</sup>

## **6. Security Councils Counter-Terrorism Committee (CTC) and its Executive Directorate (CTED)**

The duties of the CTC, which consist of the 15 Members of the Security Council,<sup>317</sup> are monitoring the implementation of the Security Council Resolution 1373 (2001) through the Member States and the by establishing a counter-terrorism policy. It is supported by its Executive Directorate, which assesses and identifies gaps in the implementation. The Executive Directorate doesn't provide technical assistance. TPB is working closely with the

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<sup>313</sup> cp. UN Brochure: Symposium on the Advancing of Implementation of the UN Global Counter-Terrorism Strategy, p. 73ff, Mr. Ali Asghar Soltanieh, Permanent Representative of the Islamic Republic of Iran to the United Nations

<sup>314</sup> cp. UN Brochure: Symposium on the Advancing of Implementation of the UN Global Counter-Terrorism Strategy, p. 123ff, Mr. Gregory L. Schulte, Permanent Representative of the United States of America to the United Nations

<sup>315</sup> cp. UN Brochure: Symposium on the Advancing of Implementation of the UN Global Counter-Terrorism Strategy, p. 22f, Mr. Jean-Paul Laborde, Chief of the Terrorism Prevention Branch, Representative of the UNODC in the Counter-Terrorism Implementation Task Force

<sup>316</sup> cp. UN Brochure: Symposium on the Advancing of Implementation of the UN Global Counter-Terrorism Strategy, p. 218ff, Mr. Thomas Stelzer, Permanent Representative of Austria to the United Nations

<sup>317</sup> cp. Van Krieken 2002, p. 145

CTC.<sup>318</sup> The UNODC and the CTC and CTED have different functions. The work of CTC and CTED guides the work of UNODC in providing technical assistance on counter-terrorism. This work supports the CTC and CTED to identify gaps in the implementation and therefore for Member States it is easier to adhere to their obligations on counter-terrorism. Furthermore, UNODC participates in field missions of CTC and CTED, and in return the CTC and CTED participate in UNODC missions to present the objectives of the SC Resolution 1373 (2001). UNODC assists Member States submitting their reports to the CTC.<sup>319</sup>

## **7. Counter-Terrorism Implementation Task Force**

The Counter-Terrorism Implementation Task Force was established in June 2005 by the Secretary General and ensures that the work of UNODC on counter-terrorism is carried out by acting as an advisor. It is an information-sharing instrument and a forum for discussing strategic issues and policy recommendations which bring together 24 key actors of the UN (various specialized agencies, funds and programmes) and their partners for effective measures against terrorism. The head of this Task Force is the Office of the Secretary General.<sup>320</sup>

Initiatives taken by the Counter-terrorism Implementation Task Force include an online handbook (launched in January 2007<sup>321</sup>), based on UN counter-terrorism measures for Member States; regional organizations or other parties; a program of work of the Task Force and working groups with issues on financing of terrorism; human rights; integrated implementation; radicalization and extremism that lead to terrorism; use of the internet for terrorist purposes; victims of terrorism and vulnerable targets.<sup>322</sup> The working group on “Addressing Radicalization and Extremism that lead to Terrorism”, was established as mentioned in the UN Global Counter-Terrorism Strategy to address issues that promote extremism and terrorism. The working group is directed by the Executive Office of the UN Secretary General, the Monitoring Team of the 1267 SC Resolution and the UN Interregional Crime and Justice Research Institute (UNICRI). It is supported by UNESCO; UNDP; the UN Department of Political Affairs (UNDPA); the UN Department of Economic and Social Affairs (UNDESA); the UN Department of Public Information (UNDPI); the International Labour

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<sup>318</sup> cp. JP Laborde, SOS Attentats 2003, p. 70

<sup>319</sup> cp. <http://www.unodc.org/unodc/en/terrorism/working-closely-with-ctc-of-the-security-council-and-cted.html>

<sup>320</sup> cp. TPB Brochure, p. 9

<sup>321</sup> cp. UN Brochure, Symposium on Advancing the Implementation of the UN Global Counter-Terrorism Strategy, p. xvii, Speech of the Chairman of the Counter-Terrorism Implementation Task Force Mr. Robert Orr

<sup>322</sup> cp. Counter-terrorism Implementation Task Force Document, January 2008

Organization (ILO) and Interpol.<sup>323</sup> This working group looks at radicalization and extremism in a precursory way, i.e. before they are terrorists. The idea is that only a few extremists are going to commit terrorist acts and what the possible reasons for this overstepping are. The working group is aiming to assist Member States to identify how extremists may become terrorists and identifies how Member States assess the problem of radicalization. Moreover, it is planned to map activities and measures taken by Member States, regional organizations or other parties on radicalization or extremism that lead to terrorism. Further planned actions for this project include briefings with people who have joined or participated in terrorist groups or extremist groups and how they are reintegrating into society and how to prevent others from joining terrorist groups. Furthermore, a database including information on radicalization and recruitment in terrorism is planned as well, to elaborate a set of examples and “best practice strategies” for Member States in order to help them address radicalization and extremism that lead to terrorism.<sup>324</sup>

UNODC participates in the work of the United Nations Counter-Terrorism Implementation Task Force which benefits its counter-terrorism assistance work. UNODC provides the above mentioned working groups as a co-chairman. The Working Group on Facilitating Integrated Implementation, the Working Group on Enhancing Technical Assistance and the Working Group on Tackling the Financing of Terrorism, are co-chaired by UNODC/TPB. The task of UNODC is to further elaborate the facilitation of the implementation of the Global Counter-Terrorism Strategy. For the Working Group on Countering the Use of the Internet for Terrorist Purposes, the Working Group on Protecting Human Rights (both of them are in the beginning stages of their work), UNODC/TPB will act as a support element. Moreover, UNODC is assigned to promote international cooperation in the implementation of technical assistance against terrorism and to organize sub-regional training for criminal justice officers on counter-terrorism in cooperation with INTERPOL and other related bodies.<sup>325</sup>

## **B. Implementing the Anti-Terrorism Conventions and Protocols**

Implementing the international legal instruments against terrorism in domestic law isn't that simple. Many aspects have to be proven in national security norms or budget issues. Some States can't ratify a treaty because of the domestic law norms or a matter of policy. To ratify the treaty the State has to accept the reciprocal obligations of the agreement.<sup>326</sup>

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<sup>323</sup> cp. Counter-terrorism Implementation Task Force Document, January 2008

<sup>324</sup> cp. Counter-terrorism Implementation Task Force Document, January 2008

<sup>325</sup> cp. UNODC Document on the role UNODC plays in the contribution to the work of the CTITF

<sup>326</sup> cp. TPB Legislative Guide, p. 4

The development of the universal instruments against terrorism started with the 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft until the 1999 Convention for the Suppression of the Financing of Terrorism. Some aspects are required for implementing the anti-terrorism conventions and protocols. In two universal instruments, offences are not defined (in the 1963 Convention and the Convention on the Making of Plastic Explosives). Offences are related to civil aviation, the status of the victim, dangerous materials, vessels and fixed platforms and financing of terrorism.<sup>327</sup> Concerning the financing of terrorism, France has defined this offence:

*“It also constitutes an act of terrorism to finance a terrorist organization by providing, collecting or managing funds, securities or property of any kind, or by giving advice for this purpose, intending that such funds, security or property be used, or knowing that they are intended to be used, in whole or in part, for the commission of any of the acts of terrorism listed in the present chapter, irrespective of whether such an act takes place.”*<sup>328</sup>

Further elements for implementing the universal legal instruments are: (1) to deny safe haven for terrorists which is defined in Security Council Resolution 1373 (2001), Article 2 (c). The principle *aut dedere aut judicare* is important at this point. When a State doesn't extradite an offender it has to judge the perpetrator by its jurisdiction. (2) Jurisdiction based on aircrafts, ships or territories. At this point the criminal code of Korea is outlined Article 2 (Domestic Crimes) *“This Code shall apply both to Korean nationals and aliens who commit crimes within the territory of the Republic of Korea.”*<sup>329</sup> Article 4 (Crimes by Aliens on Board a Korean vessel outside of Korea) *“This Code shall apply to aliens who commit crimes on board a Korean vessel or aircraft outside the territory of the Republic of Korea.”*<sup>330</sup> (3) Jurisdiction on the nationality of the offender, (4) Jurisdiction based on the protection of other specified interests and (5) Jurisdiction on extradition or prosecution of the offender.<sup>331</sup> Other important points required are obligations for prosecution, offences of participation, mutual legal assistance, extradition provisions, exceptions made for political or discriminatory purposes and the right of fair treatment.<sup>332</sup>

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<sup>327</sup> cp. TPB Legislative Guide, p. 8ff

<sup>328</sup> cited TPB Legislative Guide, p. 22

<sup>329</sup> cited TPB Legislative Guide, p. 29

<sup>330</sup> cited TPB Legislative Guide, p. 29

<sup>331</sup> cp. TPB Legislative Guide, p. 27ff

<sup>332</sup> cp. TPB Legislative Guide, p. 32ff

## **a) UN Criminal Justice System including Rule of Law standards in the implementation of UN Anti-Terrorism Instruments**

Article 6 of the ICCPR describes the obligation to protect life. *“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”*<sup>333</sup> This is one of the States responsibilities in fighting terrorist acts. Others would be to protect civilians, criminalize terrorist acts and punish those attacks and to intervene against terrorist planning and preparation. Offences within the preventive criminal justice strategy against terrorism in the UN framework are those offences elaborated in the universal legal instruments (conventions and protocols), criminalization according to ICCPR and rule of law principles; association or conspiracy; support for terrorism offences; incitement to terrorism; recruitment of terrorist groups; possession of articles or knowledge related to terrorism and training of terrorist groups or organizations. Within the procedural improvements, there is the need to include procedural measures into rule of law standards, exchange information through community cooperation, permit national security intelligence as evidence and undercover operations and misuse of NGOs, just to give a few examples.<sup>334</sup> The following Chapter will give a better insight why integrating those offences is important.

## **C. The problems of implementing UN Action against terrorism**

The measures on counter-terrorism within the UN are ongoing since 1972. In 1990 the General Assembly adopted the “Eight Congress on Crime Prevention and Criminal Justice” based on criminal law to combat terrorism. In 1994 it adopted “The Declaration on Measures to Eliminate International Terrorism”, which has been extended with an Ad Hoc Committee in 1996 which elaborated the 1997 International Convention for the Suppression of Terrorist Bombings and the 1999 International Convention for the Suppression of the Financing of Terrorism.<sup>335</sup>

It is important to combine the universal conventions and protocols on counter-terrorism with international instruments based on human rights and to guarantee international rule of law. This is difficult to achieve, but important.<sup>336</sup>

Criminal justice systems are required to prevent violent terrorism, but apparently this has led to the ineffectiveness of legislation systems. On the other hand, we have terrorists who

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<sup>333</sup> cited Article 6 of the ICCPR, cp. UN Brochure, Preventing Terrorist Acts 2007, p. 1

<sup>334</sup> cp. UN Brochure, Preventing Terrorist Acts 2007, p. 1ff

<sup>335</sup> cp. JP Laborde, SOS Attentats 2003, p. 64f

<sup>336</sup> cp. JP Laborde, SOS Attentats 2003, p. 66



commit suicide attacks. *This failure of deterrence measures*<sup>337</sup> leads to protection outside of the criminal justice system. Another big problem would be that in case criminal justice systems are ineffective in preventing terrorism, this could undermine the rule of law and human rights. This also includes the implementation of the UN actions against terrorism. The solution for both problems would be the establishment of a criminal justice measure which includes both criminal justice and rule of law standards. Such measures cannot only be based on counter-terrorism. They have to include human right standards, too. The thesis of JP Laborde and Micheal DeFeo is that “*effective criminal law enforcement and observance of rule of law principles need not be weighed against each other.*”<sup>338</sup> If legal mechanisms can be taken to fight against terrorism successfully, the international community would have more respect for rule of law. The International Covenant on Civil and Political Rights (ICCPR) has been accepted by more than 150 UN Member States and is a source based on criminal justice rights. In anti-terrorism instruments, it is not only important to try to respond to individual acts of terrorism, but what is more important is to also find follow up strategies, which require a definition of offences. The ICCPR guarantees “*the freedom to manifest one’s religion or beliefs and the right to hold opinions without interference.*”<sup>339</sup>

Within the UN there are 13 anti-terrorism agreements based on the fact that international terrorism is a threat to international peace and security. Therefore, the Security Council called upon the Member States to implement these universal instruments (see table of all Conventions and Protocols, part III, chapter A, 1). Three of these international agreements have terrorism preventive elements. The 1980 Convention on the Physical Protection of Nuclear Material, the 1991 Convention for the Marking of Plastic Explosives for the Purposes of Detection and the 1999 International Convention for the Suppression of the Financing of Terrorism. Those three have specific regulations and requirements on nuclear material, plastic explosives or the interruption of financial preparations. Criminal liability in eight universal instruments on counter-terrorism is based on attempts or participation as an accomplice. The 1997 International Convention of Terrorist Bombings has two other forms of regulation: organizing others to commit an offence and international contribution of an offence by groups. Prosecution of those five criminal liability forms is not allowed until the attack is completed.<sup>340</sup> In fact, authorities should prevent acts before they arise, i.e. in the preparation. Suicide bombers believe strongly in their act that no deterrent is effective enough in criminal justice systems. Anti-terrorism interventions have to be against planning and preparing terrorist acts, like conspiracy. But offences like conspiracy have never been

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<sup>337</sup> see Laborde JP/Michael DeFeo 2006, p. 1088, in: Journal of international criminal justice

<sup>338</sup> cited JP Laborde/Michael DeFeo 2006, p. 1088

<sup>339</sup> cited JP Laborde/Michael DeFeo 2006, p. 1089, ICCPR, Article 18 and 19.

<sup>340</sup> cp. JP Laborde/Michael DeFeo 2006, p. 1090

included in UN anti-terrorism instruments. This is a problem because it is important to define illegal preparation in the concept of conspiracy. In the 1999 International Convention on the Financing of Terrorism, financial preparatory is criminalized in Article 2 and the intervention before a criminal act is permitted. The Member States of the UN have agreed that in order to prevent terrorism the Security Council adopt anti-terrorism instruments to act on their behalf against threats of international peace and security. This obligation is based on the UN Charter. The Security Council adopted several Resolutions with regard to threats made by terrorists. The 1999 Resolution 1267 imposes on States to ban travel and freeze Taliban's assets, and followed the terrorist attacks on the US embassies in Kenya and Tanzania. Resolution 1390 is of an open character, while Resolution 1526 (2004) created a Sanction Monitoring Team.<sup>341</sup> But with the 1373 (2001) Resolution, for the first time within the UN system, the Security Council adopted a resolution which is based on Chapter VII of the UN Charter and on a specific issue and not on a region in the world. It is a *piece of legislation*.<sup>342</sup> Member States of the UN are legally bound by this resolution. The Permanent Five Members of the Security Council should not veto against resolutions based on the UN Charter.<sup>343</sup>

Security Council Resolution 1373 (2001) has three main paragraphs based on the financing, prevention and suppression of terrorism.<sup>344</sup> SCR 1373 calls upon States to ratify and implement the universal legal instrument on counter-terrorism, not support any form of terrorist acts and to take all the necessary steps to prevent terrorism (see definition cited in part II, chapter B, 1 of this present paper). Not only is it important to integrate the required offences and measures to prevent terrorism in the 1373 Resolution, but it is also important to integrate the rule of law in the preventive measures. Apart from the 1999 Convention on Financing, all international anti-terrorism conventions and protocols define forms of criminal liability only applicable when the act is attempted or completed. A law on offences of association or conspiracy would permit prosecution before the act takes place and of course it would also save lives. It could be made through bilateral agreements, extradition or legal assistance. Criminal association and conspiracy laws are comparable with rule of law standards.<sup>345</sup>

The ICCPR defines in Article 20 (2) “*Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.*”<sup>346</sup> But this article doesn't specify that the advocacy, hostility or violence must be criminal.

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<sup>341</sup> cp. Bianchi 2006, p. 1046f

<sup>342</sup> cited Bianchi 2006, p. 1047

<sup>343</sup> cp. JP Laborde, SOS Attentats 2003, p. 67

<sup>344</sup> cp. JP Laborde, SOS Attentats 2003, p. 67

<sup>345</sup> cp. JP Laborde/Michael DeFeo 2006, p. 1093f

<sup>346</sup> cited ICCPR Article 20 (2), JP Laborde/Michael DeFeo 2006, p. 1094

Incitement of terrorism is included in Security Council 1373 (2001) and 1624 (2005). The Security Council calls upon States to fulfil their obligation of international law to fight against incitement of terrorist acts. Every person should be free of violent threats made through terrorism (Article 19 of the ICCPR). Everyone has the right to hold opinions but this could be restricted by criminal laws in case the expression threatens the right of others or national security. Article 18 aims for the right of religious freedom and freedom of conscience.<sup>347</sup> Article 14 (3) of the ICCPR defines that no one should “*be compelled to testify against himself or to confess guilt*”.<sup>348</sup> It Also is written in Article 17 of the 1999 International Convention on Financing of Terrorism that “*any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.*”<sup>349</sup>

No legislation or executive has the power to declare which philosophy or slogan is prohibited. Every legal system must ensure that even the worst agitator has to be protected by legal orders.<sup>350</sup> Criminal justice strategies should be preventive, before terrorist acts occur and they should be included in rule of law norms. Anonymity is another problem in the prosecution process, because it could lead to a prosecution of the perpetrators. Some countries allow a limited degree of anonymity.<sup>351</sup>

Another problem is extradition or foreign gathering of evidence<sup>352</sup> because both have to fulfill rule of law standards. Political offences are excluded from international agreements. The cooperation on a bilateral basis after a terrorist act is complicated because of the missing agreements in international treaties. The 1997 Convention on the Suppression of Terrorist Bombings and the 1999 International Convention on Financing of Terrorists have included Articles in this regard “*a request for extradition or for mutual legal assistance based on [...] political offences or offences inspired by political motives may not be refused on the sole ground [...]*”<sup>353</sup>

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<sup>347</sup> cp. JP Laborde/Michael DeFeo 2006, p. 1096

<sup>348</sup> cited Article 14 (3) of the ICCPR, cp. JP Laborde/Michael DeFeo 2006, p. 1102

<sup>349</sup> cited Article 17 of the 1999 International Convention on the Suppression of the Financing of Terrorism

<sup>350</sup> cp. JP Laborde/Michael DeFeo 2006, p. 1098

<sup>351</sup> cited JP Laborde/Michael DeFeo 2006, p. 1100

<sup>352</sup> cited JP Laborde/Michael DeFeo 2006, p. 1102

<sup>353</sup> cited 1997 Convention on Terrorist Bombings and 1999 Convention on Financing of Terrorism, cp. JP Laborde/Michael DeFeo 2006, p. 1102,

UN action against terrorism should be combined with rule of law standards and human right principles. This would lead to an effective preventive measure on counter-terrorism and it would also instil more public respect of the value of rule of law.<sup>354</sup>

Another problem of prosecuting terrorist perpetrators is the discretionary powers of prosecution. Prosecutors can decide whether to put terrorist offences to trial or not. In the Security Council Resolution 1373 (2001), terrorists are denied safe haven and in general to fight against terrorism in all its forms. The Counter-terrorism Committee (CTC) is monitoring the States obligation to fulfill the requirements mentioned in Resolution 1373 (2001).<sup>355</sup>

Security Council Resolution 1373 (2001) is based on the UN Charter, Chapter VII, which means that Member States are liable to complete all the requirements mentioned in this resolution. The work of the CTC is to monitor Member States, to submit their report to the CTC and provide it with information on the current status of their law. These reports aim also to clarify aspects in domestic law for implementing the universal legal instruments and to prepare Member States for new ratification of other international instruments on counter-terrorism. Another part of the work of the CTC is to support States in upgrading their laws to ensure the best technical support.<sup>356</sup> The Counter-Terrorism Committee is in an ongoing dialogue with the Member States. As mentioned before, one of the main goals of the SCR 1373 is the financing of terrorism; this is the reason why the CTC is questioning the domestic money transfer systems of Member States. Member States also report their problems of implementing the Resolution 1373. The Geneva Convention of 1948 ensures that jurisdiction of humanitarian law is exercised effectively.<sup>357</sup> Perpetrators of a terrorist act will not go unpunished because States are liable to either extradite the perpetrator or punish in their State. The main objective for the international legal instruments on counter-terrorism is to provide legislators with legal tools for international cooperation.<sup>358</sup>

### **a) Member States and their problems with implementing the Security Council Resolutions**

International Terrorism is one of the most dangerous threats of our times. As mentioned in the former Chapters, the Security Council took action to impose obligations of a general character for Member States to avoid and prevent terrorist attacks made by individuals or

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<sup>354</sup> cp. JP Laborde/Michael DeFeo 2006, p. 1103

<sup>355</sup> cp. Betti 2006, p. 1104

<sup>356</sup> cp. JP Laborde, SOS Attentats 2003, p. 68

<sup>357</sup> cited Betti 2006, p. 1107

<sup>358</sup> cp. Betti 2006, p. 1110

States. It has acted more like a world government than a peace enforcer.<sup>359</sup> Member States are obliged to submit reports to the CTC in order to state problems of the implementation of the SC Resolutions based on counter-terrorism. With the anti-terrorism instruments the SC calls upon Member States to incorporate those instruments in their domestic laws. But in fact, according to the States reports, implementing those anti-terrorism instruments present difficulties, because the incorporation of those anti-terrorism instruments should not infringe upon other international agreements that States have undertaken. The most controversial aspects would be the effects of anti-terrorism measures on human rights.<sup>360</sup> States are parties in conventions regarding human rights but also bound on anti-terrorism measures of the Security Council. Article 103 of the UN Charter *“In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”*<sup>361</sup> This means that human right obligations could be overridden by anti-terrorism instruments as *“the UN is not a party to any human rights treaty.”*<sup>362</sup> But the UN is obliged to respect human rights because the UN is subject to international law. As Bianchi points out, it would be odd to exempt the UN from the obligation to respect human rights as the UN is a protector of fundamental human rights. Because of the fact that some measures of the Security Council may affect human rights<sup>363</sup>, Liechtenstein points out before the Security Council *“there is no doubt that UN organs, when imposing measures that have a direct and dramatic impact on the rights of individuals, must respect international standards of human rights in a similar manner as States have to.”*<sup>364</sup>

Once again, the problem is an absence of a definition of terrorism. Because of its own definition, the intention of the Security Council was not to counter-terrorism. The SC speaks of criminal acts rather than of terrorist acts. Resolution 1373 includes the *“aut dedere aut judicare clause”*, which obliges States to either extradite or prosecute terrorists. Bianchi describes international judicial cooperation and domestic prosecution as two sides of a coin. International instruments against terrorism are an effective measure on preventing terrorism, but its implementation in domestic laws of Member States is required.<sup>365</sup>

Another document on terrorism which is quite criticized is the “Al-Qaida and Taliban Consolidated Sanction List” of persons and entities. This list contains names and functions of former Taliban members. Travel is denied and their financial assets are frozen. Information is

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<sup>359</sup> cp. Bianchi 2006, p. 1044

<sup>360</sup> cp. Bianchi 2006, p. 1045

<sup>361</sup> cited Article 103 of the UN Charter

<sup>362</sup> cited Bianchi 2006, p. 1061

<sup>363</sup> cp. Bianchi 2006, p. 1062ff

<sup>364</sup> cited UN Doc. S/PV.5446, cp. Bianchi 2006, p. 1063,

<sup>365</sup> cp. Bianchi 2006, p. 1055f

provided, among other things, by intelligence sources. Member States are promptly informed on any changes in this list and of course errors occur. In some countries this list is incorporated into national law but other States don't accept it as a legal instrument. There are also different ways in which States implement freezing assets. Some States have incorporated regulations that would allow domestic authorities to freeze assets of suspects of persons on the Consolidated List and other States have implemented the freeze of assets in the UN statute.<sup>366</sup>

The main role of the General Assembly is to protect human rights and counter-terrorism. Under international law States have the obligation of taking the necessary measures to combat terrorism taking into account that their implementation measures do not comply with other international agreements within international humanitarian law and refugee law.<sup>367</sup> Bianchi clearly points out that the Security Council is not a world government. As for the repression of terrorist acts, the Security Council is not in the position to enforce the law prescribed in several of the resolutions.<sup>368</sup> The protection of human rights has become very important. UN Sanctions are challenged by anti-terrorism measures but fundamental human rights have to be respected over security concerns.<sup>369</sup>

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<sup>366</sup> cp. Bianchi 2006, p. 1056ff

<sup>367</sup> cp. Bianchi 2006, p. 1069

<sup>368</sup> cp. Bianchi 2006, p. 1071

<sup>369</sup> cp. Bianchi 2006, p. 1072f

## IV. Part – Practical Aspects

The practical aspects of this present paper will give an insight of the practical work of the Terrorism Prevention Branch. As mentioned before, TPB has a special mandate to provide technical assistance on counter-terrorism to strengthen the legal regime of Member States. The main focus of UNODC's technical assistance is on the universal legal regime against terrorism: Security Council Resolution 1373 (2001); Security Council Resolutions on Al Qaida and the Taliban 1267 (1999) and 1735 (2006); Security Council Resolution 1540 (2004) on weapons of mass destruction and of course the 16 international conventions and protocols against terrorism. The practical work of TPB includes presentations of the universal legal framework, workshops and field missions (including nuclear terrorism and financing of terrorism), support workshops with preventive aspects and training in extradition and mutual legal assistance. As well as, training of criminal justice officers and judges, assistance in domestic criminal law questions against terrorism and in drafting the reports of the States to the Counter-Terrorism Committee. The method of TPB for technical assistance to Member States can be through videoconferences, national workshops (by analysing the legislation, identifying gaps in the legislation, deliver assistance and the training of criminal justice officers), training workshops, specialized workshops or regional and sub-regional workshops or seminars.<sup>370</sup>

Videoconferences can be used to make the first contact with the State to address their needs, to explain the further process and goals of the working methods of TPB, to provide legal advice, drafting reports or technical assistance. Videoconferences are more economical and help to unite countries. On the national level, technical assistance is incorporated in a five-step methodology: to analyze national legislation; to work with national authorities and identify the needs; to assist States in implementing laws in their national legislation on counter-terrorism; to recommend further steps in the implementation and follow up activities and to train criminal justice officers.<sup>371</sup>

TPB's mandate to provide technical assistance has been expanded in the General Assembly in its resolution 61/40 from 4 December 2006.

It is requested that TPB *"continues its efforts to enhance, through its mandate, the capabilities of the United Nations in the prevention of terrorism, and recognized, in the*

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<sup>370</sup> cp. TPB Presentation to Member States concerning Technical Assistance

<sup>371</sup> cp. TPB Document: Note on Accomplishments from 1 January 2008

*context of the United Nations Global Counter-Terrorism Strategy and Security Council Resolution 1373 (2001), its role in assisting States in becoming parties to and implementing the relevant international conventions and protocols relating to terrorism, including the most recent among them, and in strengthening international cooperation mechanisms in criminal matters related to terrorism, including through national capacity-building.”<sup>372</sup>*

In this regard TPB elaborated specialized training in counter-terrorism for criminal justice officers. TPB provided specialized training of this kind in Burkina Faso with senior judges and prosecutors, in Egypt and in Morocco in 2006. The goal was to provide judges and prosecutors with knowledge and the practice needed to implement the universal legal instruments. These specialized training sessions lasts for a minimum of three weeks in the VIC, or in another UNODC Regional Office. The outcome of these training sessions are reports which have to be submitted to UNODC. Evaluation is made by the trained criminal justice officials and by the Government on how effective the training is. TPB Evaluation is made through feedback and reports and a follow up session one year after the training.<sup>373</sup>

TPB offers several technical assistance tools such as a Legislative Database, a Legislative Guide to Universal Anti-Terrorism Conventions and Protocols; a Guide for Legislative Incorporation of the Provisions of the Universal Instruments against Terrorism; Preventing Terrorist Acts: a Criminal Justice Strategy of UN Anti-Terrorism Instruments; a Model Law against Terrorism; a Model Law on Extradition; the TPB Brochure 2008; the TPB Webpage (<http://www.unodc.org/unodc/en/terrorism/index.html>), a Brochure which includes the Universal Instruments against Terrorism; a Brochure which includes all relevant SC Resolutions to the Fight against Terrorism; a Comparative Study on Anti-Terrorism Legislative Development in Seven Asian and Pacific Countries and several leaflets related to the work of TPB; a mutual legal assistance request writer tool (prepared by the UN Treaty and Legal Affairs Branch); a UNODC Manual Against Kidnapping and a Model Law on mutual legal assistance (prepared by the UN Treaty and Legal Affairs Branch). Other tools of the Terrorism Prevention Branch are still in process such as an International Legal Framework for combating Nuclear Terrorism, an Introduction to International Law Aspects relating to Counter-Terrorism and a Digest of Terrorist Cases for Practitioners.<sup>374</sup>

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<sup>372</sup> cp TPB Document on Specialized Training Sessions in Counter-Terrorism for Criminal Justice Officials, cited GA Resolution 61/40 from 4 December 2006

<sup>373</sup> cp. TPB Document on Specialized Training Sessions in Counter-Terrorism for Criminal Justice Officials

<sup>374</sup> cp. TPB Presentation to Member States concerning Technical Assistance



## **1. General practical work of the Terrorism Prevention Branch**

The Terrorism Prevention Branch is part of the Division for Treaty Affairs from the United Nations Office on Drugs and Crime. The Treaty and Legal Assistance Branch is another part of the Division for Treaty Affairs. The Director is the Head of this Division. The Criminal Law Support Group and the Management Advisory and Support Group are advising and supporting the Director on management and programme or criminal law issues. Specialized experts from relevant sections are working in these groups. Within the Treaty and Legal Assistance Branch there are different sections related to Policy Support, Organized Crime and Criminal Justice and Corruption and Economic Crime.<sup>375</sup>

Within the Terrorism Prevention Branch, there are several sections on Counter-terrorism Programme and Policy Coordination, Counter-terrorism Legal Service I and Counter-Terrorism Legal Service II. These sections are divided in teams providing the world with technical assistance against terrorism to strengthen the international legal regime against terrorism. The teams serve in different parts of the world, like the South Asian, East Asian and Pacific Team, the European and Central and West Asian Team, the African Team, the Middle Eastern and North African Team, the Latin American and Caribbean Team and the Policy and UN System Matters Team. TPB is located in the Vienna International Centre. It has now around 35 members providing global counter-terrorism work.

During my internship period several conferences were taking place in Vienna. The activities of TPB are planned in advance with information including the staff members who are going on mission or are organizing the conference, what day/month, the destination (Country or City), the purpose of the mission or conference and the expected outcome.

One big conference took place on 6-7 December 2007 in the Vienna International Centre on nuclear terrorism. It was the "Expert Group Meeting on the Implementation of the Penal Provisions on Nuclear Terrorism contained in the Universal Legal Framework against Terrorism". During this conference the different instruments dealing with nuclear terrorism were presented. For example, the United Nations Security Council Resolutions 1373 (2001); 1540 (2004) and 1735 (2006); the Convention for the Suppression of Acts of Nuclear Terrorism (2005); the International Convention for the Suppression of Terrorist Bombings (1999); the Convention on the Physical Protection of Nuclear Material and its Amendment (1979 and 2005) and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988). Another discussion point was the offences related to nuclear

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<sup>375</sup> cp. Document on what the Division for Treaty Affairs does

terrorism and the issues of jurisdiction. The responsibilities of the legal officials were also a discussion point in this conference. Furthermore, different international organizations presented their work. For example, the IAEA (International Atomic Energy Agency); IMO (International Maritime Organization); UN/OLA (Office on Legal Affairs) and UNODC. The UNODC model provisions against nuclear terrorism were presented and discussed by the participants of the conference. The implementation of the universal legal instruments and the problems of Member States on that matter was a further discussion point. Experts participating came from different countries and different organizations.<sup>376</sup>

Below there are some statements made by the experts participating during the nuclear terrorism conference. By mentioning these statements, the author's intention was to give an insight on what high-level experts in the field of nuclear terrorism prevention argued and discussed during that very interesting meeting. The mentioned contributions are a summary of the notes taken during this conference by the author<sup>377</sup>.

*In this meeting it came up that terrorist funding doesn't mean only financial funding, for example, it can also be radioactive material. Another discussion point was about the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism (which has been adopted on a Russian proposal) and how to criminalize acts with BCN (biological, chemical and nuclear) weapons, within the penal code or nuclear law?*

*For fighting nuclear terrorism it is important to know what we are dealing with, therefore it has to be defined and the Conventions and Protocols are interesting and important, but as long as they are not ratified by the Member States they are useless. On a domestic level these conventions matter a lot.*

*Another problem came up on the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988 and its interpretation on what action has to be taken when a crime on board a ship on the high sea occurs. If it is a terrorist act the UN mandate would come into force. Maritime lawyers are not criminal lawyers.*

*UNODC has the leading role in institutionalizing the principles (international instruments against terrorism) and make them a reality.*

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<sup>376</sup> cp. TPB Document on the Nuclear Terrorism Conference, 6-7 December 2007

<sup>377</sup> Notes Taken during the Conference on Nuclear Terrorism, 6-7 December 2007

*The model provisions have been criticized too, because of the absence of a definition of nuclear terrorism. Another expert said that the gaps are not the problem of the model law. The point is that countries have to make different domestic laws. The model law should be a guideline. We have to combine our efforts in finding a definition on terrorism. Nuclear terrorism is a dangerous threat. We have to know what offences we want criminalized. Extradition should also be included in these model provisions.*

*The International Convention for the Suppression of the Financing of Terrorism of 1999 is in force since June 2007 and 22 States take part. Some experts participating in the meeting pointed out that it is time for an expanded version of this Convention, but an amendment is difficult to establish. The Financial Convention covers nuclear terrorism, but not the other way around.*

*Another problem is that the States have different law systems and therefore they handle defining and criminalizing offences differently. It shouldn't be up to the States to decide how to define and criminalize. We have to make sure that every State is dealing with the same thing. The model provisions are only an example for technical assistance, pieces of the Conventions. They tell States how to use it (TPB representative to defend the model law).*

*Other experts pointed out that it is not possible to have just one definition of all conventions on terrorism. One definition could produce more difficulties than solving the problem – for a special article there should be a special definition. Not only a definition of terrorism is necessary but also for transfer or transportation. Judges shouldn't have to make definition,s they are assigned to use the laws not to look beyond the text.*

#### The author's comments about the statements taken by the experts during the meeting:

Most of the statements mentioned by the experts lead to the root problem of a lack of a definition as well as the important role the UN has in fighting nuclear terrorism. The experts discussed several related Conventions and Protocols and how they have been interpreted by them. The point made about the funding of terrorism shows the problematic situation we are facing because of the lack of a proper definition in penal codes. Therefore, terrorist funding should not be defined as financial funding only, but also with other material goods such as radioactive material. The point made on how to criminalize acts with BCN weapons bring up the problem of whether or not such acts include a special nuclear law in the penal code or if these crimes should be acts under the penal code. Furthermore, the chief of the Terrorism Prevention Branch called upon the Member States to ratify the terrorism related Conventions

and Protocols in order to facilitate nuclear terrorism prevention. A more specific statement was made about the model provisions provided by the Terrorism Prevention Branch. The problem mentioned on the model provisions bring up the different opinions by countries due to different domestic laws. The model provisions are only a guideline for countries in order to help fill gaps in domestic laws. The problems mentioned in the statements occur, among other things, because of the diversity of different domestic laws, the lack of an agreement of a general definition and missing ratifications of the nuclear terrorism related Conventions and Protocols.

Every year TPB is organizing an annual TPB Workshop for Staff and Experts. This year the Workshop was from 25-29 February 2008 in Vienna. The purpose of this meeting is to get a better insight of the work and the problems of the Field Offices and also of the Headquarters in Vienna. TPB's mandate, as well as, UNODC's policy development, was presented. Furthermore, partnerships and coordination of TPB was presented including the work with CTC/CTED and the 1267 and 1540 Committees, the work with the CTITF and the partnership with other international organizations. The Team Leaders of TPB presented their methods of providing technical assistance to Member States upon request. Moreover, the model legal provisions against terrorism and the Nuclear Terrorism legal challenges have been explained by TPB. Invited IAEA representatives presented the implementation of the International Counter-Nuclear Terrorism Instruments with IAEA. Another discussion point included the Treaty and Legal Affairs Branch and how it can work together with the Terrorism Prevention Branch. Another point on the Agenda was the consultation between field experts and the Headquarters of TPB. The outcome of this consultation was a work plan of TPB.<sup>378</sup>

Another important Conference will take place in Vienna from 14-18 July 2008. It will be a "Legal Workshop for Small Island Developing States" (SIDS) on the criminal law aspects of countering maritime terrorism in the light of relevant universal instruments. The purpose of this meeting is to support the SIDS countries (about 38 countries) in fully obtaining the ratification of the universal legal instruments against terrorism. It should also strengthen the international cooperation in criminal matters concerning terrorism, especially maritime terrorism. The working languages of this meeting will be English, French and Spanish. Suggested topics of this conference are the role of the Counter-Terrorism Committee of the United Nations Security Council by representatives of the Counter-Terrorism Committee Executive Directorate; the legal instruments negotiated under the auspices of the International Maritime Organization; the role of the regional organizations (like CARICOM –

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<sup>378</sup> cp. TPB Draft Agenda of the Workshop for Staff and Experts from 25-29 February 2008

Caribbean Community Secretariat, the Commission of the Indian Ocean or Pacific Island Forum Secretariat). Furthermore, TPB is planning to provide the participants with the response of the global legal framework against maritime terrorism and other related legal issues. Another suggested point will be a discussion with the representatives of the SIDS countries on the ratification of the universal conventions and protocols against terrorism and the cooperation against maritime terrorism. This discussion could also include jurisdictional issues, extradition and mutual legal assistance, drafting legislation on terrorism or the interplay of the law of the sea and with nuclear issues. National legal experts from TPB could give legal advice on extradition or legal assistance related to terrorism.<sup>379</sup>

## **2. Digest of Terrorist Cases for Practitioners (7-8 February 2008)**

Please note, that the Digest of Terrorist Cases for Practitioners is still ongoing and that the following presented elements are only one part of the first conference and further actions of the Digest are only suggested.

The “First Expert Group Meeting of the Digest of Terrorist Cases for Practitioners” was organized by the Terrorism Prevention Branch and hosted in Vienna on 7 and 8 February 2008. The purpose of this Meeting was to begin the process of elaborating a Digest of Terrorist Cases for Practitioners. Twenty-one high-level experts from relevant countries, affected by terrorist acts, participated. The Digest aims to be a compilation of practical legal experiences related to terrorist cases for policy-makers for common and civil law countries, as well as for criminal justice officials and investigative police. It is a common practice to bring together judicial experiences on the national level, but at present there is no such compilation on the international level relating to terrorism cases, which is essential in cases with terrorist acts. Countries have the opportunity to provide a report on terrorist cases, in order to create a “good practice” strategy, including the problems and challenges they had during investigating or prosecuting in terrorist cases and relating their positive and negative judicial experiences.

During the conference, countries shared their national experiences and investigative and prosecution techniques as well as their problems with other countries. The Digest of Terrorist Cases will be an important tool for practitioners on counter-terrorism. It will be, as mentioned before, a new technical assistance tool on counter-terrorism. The outcome of this meeting is expected to be the content for a list of cases that will follow in the future as well as an agreement on the methodology by the experts for selected cases. This First Meeting will be

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<sup>379</sup> cp. TPB Invitation to the SIDS countries and the Draft Provisional Agenda

followed by two further meetings in 2008 in order to finalize the Digest of Terrorist Cases for Practitioners.

Since the high-level experts participated from all over the world, the working languages have been English, French and Spanish. The high-level experts of the first meeting had to prepare a short introduction in their countries case investigation and if, in the case prosecution. TPB prepared a “concept paper” on the Digest of Terrorism Cases, which was a guideline for experts. UNODC covered the costs for air tickets and hotel with a daily subsistence allowance (DSA/per diem) for this first meeting. The participating experts have been accompanied by Members of each State’s Permanent Missions to the United Nations as well as from Observers, who basically took notes, but didn’t take an active part in the conference. The security level of this meeting was high, considering the sensitive purpose of this meeting and the list of participants. Therefore, it was a closed meeting. The major part of this first expert meeting was economically funded by the Government of Colombia and they cooperated therefore in the organization of the first expert group meeting.<sup>380</sup>

The Digest of Terrorist Cases for Practitioners will be presented approximately in February 2009. The work of the Terrorism Prevention Branch is effective and welcome in most countries. What is important now is the interchange of information and ideas of States. The international network against terrorism has to be even more effective in order to support the exchange among Member States and to identify the needs of technical assistance from TPB. Follow up activities, for example, the Ministerial Conferences are important. In order to provide more effective measures on counter-terrorism the need exist to develop the technical assistance tools, such as the Digest of Terrorist Cases for Practitioners. This digest will complement other manuals of TPB, because it focuses on the terrorist cases and their prosecution and jurisdiction. This Digest will be made for policy-makers, judicial officials and judicial or investigative police. It will serve to strengthen the legal regime against terrorism and it should facilitate the work of actors, in the above mentioned areas, at national and international level.

The Methodology of the Digest is to present case by case the actual investigation and prosecution process of real terrorist cases and the legal (positive and negative) experiences by each national expert as well as their problems and pitfalls that arised during the investigation or jurisdiction process. The outcome of the First Expert Group Meeting was to draft a table of contents for the Digest of Terrorist Cases and one terrorist case, selected by each participated expert. The cases provided by the experts should have been specific

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<sup>380</sup> TPB List of Participants for the First Expert Group Meeting of the Digest of Terrorist Cases for Practitioners and other relevant TPB Documents

crimes committed, relevant to counter-terrorism; including investigative or/and prosecutorial modalities; give an insight of the gaps in national legislation; listed the challenges of the terrorist case and point out the use of international legal instruments on counter-terrorism.

Each expert presented his countries problems with terrorist acts in the first meeting. The Digest will include an index to facilitate judicial issues covered in each case for the readers. This suggested index is structured by topics such as investigation and prosecution of terrorist acts which would include the conduct of such acts and evidence. Another aspect of the Index could be the financing of terrorism, including cases of freezing and confiscating assets, criminalizing the financing of terrorism or special evidence. More interesting for the Index could be links between terrorism and other forms of crime like terrorism and illicit trafficking of narcotics or arms (weapons and explosives) or human beings, terrorism and organized crime. Another aspect could be specialized techniques of investigation such as judicial problems and their use, international cooperation in criminal matters, like mutual legal assistance, extradition, asylum and intelligence sharing. Further points could be the use of international instruments as a legal basis for international cooperation (International Conventions and Protocols) and examples of operational protocols like crisis management or the coordination of investigation and prosecution.<sup>381</sup> The expected key challenges of the presentation of the cases could be human resources problems, a lack of judicial guarantees and national legislation, problems with converting information into evidence, inadequate crime scene and evidence or insufficient international cooperation.

In the First Expert Group Roundtable Meeting in Vienna, 7-8 February 2008, high level experts from Algeria, Colombia, Egypt, France, Indonesia, Ireland, Italy, Japan, Kenya, Mexico, Peru, Russia, Spain, United Kingdom, United States, EUROJUST, Interpol and the International Association of Prosecutors participated.<sup>382</sup>

The two additional meetings of the Digest will take place either in Colombia or Vienna and Rome. February 2009 is the estimated date for the presentation of the Digest.<sup>383</sup>

#### **a) Organization of the Digest of Terrorist Cases**

This meeting was not an official one therefore experts were invited as individuals and not as State representatives.

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<sup>381</sup> cp. Document of TPB: Concept Paper

<sup>382</sup> TPB Documents

<sup>383</sup> TPB Documents

TPB organized the first conference in collaboration with the Government of Colombia, starting with addressing the high-level experts of each country. The Permanent Missions of the UN Member States kindly supported TPB on that issue. State's Permanent Missions to the UN will be informed about the action taken by the Terrorism Prevention Branch. Moreover, TPB organized accommodation and flight itineraries for the experts and sent invitations to the experts as well as to each country's Permanent Mission. As for the high-level experts invited, it wasn't always easy to avoid problems with Visas or flight tickets. TPB provided the invited experts with an "information note" with information on Visas, travel, accommodations and DSA/per diem (daily subsistence allowance) issues, as well as the basic information about the conference. The experts had to return a "registration form" for their participation in the conference as well as for a hotel room, if required.

The First Conference of the Digest of Terrorist Cases started with an opening session and the opening words of the Chief of the Terrorism Prevention Branch, Jean-Paul Laborde. The following aspects of the agenda of the first conference were an introduction of the content of the Digest, the suggested methodologies, the presentations of cases by the experts participating and the conclusion.

## **b) Brief overview of Experts Terrorist Case Presentations**

Listed below are the main points of some of the presentations of terrorist cases and the challenges and problems of different countries.

The Head of National Intelligence of the National Police of Colombia presented first a principal overview of the FARC (Fuerzas Armadas Revolucionarias de Colombia – Revolutionary Armed Forces of Colombia), which are considered to be a terrorist group. Afterwards, he presented the "el Nogal" Case.

The orientation of the FARC has changed over the years (43 years of criminal activities) from bandits in the 60's and 70's to a terrorist organization in the 90's and 2000. In the last 10 years there have been 16,522 terrorist acts in Colombia. In the "El Nogal" Case the strategically investigation of this terrorist case has been presented. On 7 of February 2003 a car bomb exploded in a Club, "el Nogal", in Bogotá, 33 people died and 190 were injured.<sup>384</sup> This act was criminally motivated and it was considered to be a planned terrorist act. The

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<sup>384</sup> Presentation of the Head of National Intelligence of the National Police of Colombia, in the First Conference of the Digest of Terrorist Cases



government of Colombia attributed this terrorist act to the FARC, which denied any involvement in that case. So far, no terrorist has been arrested for the “el Nogal” Case.

The Public Prosecutor of the National Counter-Terrorism Unit of the Attorney General’s Office of Colombia described the difficulties in the investigation of that case which are a lack of resources and the procedural order. To scope these difficulties, the State officials have to be provided with security and a group of multidisciplinary officials have to be in charge, in order to achieve a successful investigation followed by prosecution.<sup>385</sup>

The Japanese Deputy Director of UNAFEI presented the “Hague Incident” of the Japanese Red Army (JRA) committed by Fusako Shigenobu. JRA is an extremist group of the 60’s to revolutionize the world. The Deputy Director points out the major incidents committed by the JRA. “The Hague Incident” was planned by JRA in 1974 with the aim of kidnapping Japanese businessmen in Europe to get ransom. Shigenobu occupied the French Embassy on 13 September 1974 in Hague and demanded 1 million US dollars for the release of Yoshiaki Yamada, also a member of JRA, and he also took 11 hostages. Two police officers were seriously injured by gun fire. Yamada was freed and the JRA got 300,000 US dollars. In November 2000 Shigenobu was arrested in the “Osaka Prefecture”, Japan.

The problem was the investigation was initiated by the Dutch authorities. Japanese officials obtained an “Official Report” for the trial. The hostage’s statements were included in this Official Report, but the hostages couldn’t testify in a Japanese court. Another problem was the relevancy of the documents, because the Japanese trial needed the exact copies of the documents in order to count as evidence. Some documents have been handed over from the French authorities. Japan requested mutual legal assistance in order to obtain evidence.<sup>386</sup>

The Public Prosecutor of the Attorney General’s Office of Indonesia presented the ROIS Case, which was a suicide bombing of the Australian Embassy on 9 of September 2004 in Jakarta. The Indonesian legislation system was described. For the suspects the court demanded the death penalty. The prosecutors were involved in that case from the beginning on. Indonesian legislation system is based on the French system.<sup>387</sup>

The Deputy Attorney General from Mexico presented the case of “Los Hermanos Cerezo” (the Cerezo brothers). On 8 of August 2001, 4 attacks with explosives were committed at the

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<sup>385</sup> Presentation of the Public Prosecutor of the National Counter-Terrorism Unit of the Attorney General’s Office of Colombia

<sup>386</sup> Presentation of the Deputy Director of UNAFEI of Japan

<sup>387</sup> Presentation of the Public Prosecutor of the Attorney General’s Office of Indonesia

same time, in Mexico City, in the national bank of Mexico, BANAMEX. During the process of investigation, evidence was found which claimed the involvement of the FARP (Fuerzas Armadas Revolucionarias del Pueblo – Revolutionary Armed Forces of the village). Another 6 suspects were arrested for crimes of terrorism, organized crime, possession of arms and explosives. To arrest the suspects, the investigative work of the police was important.<sup>388</sup>

The Head of the International Cooperation and Economy Officer of the Finance Police of Italy presented the work of the “Guardia di Finanza” (GdF) an “Economic and Financial Law Enforcement Agency”. Special work of GdF is in terrorist financing as well as in the field of anti-money laundering. The provided practical aspects are about a terrorist cell called Op. “TOUAREG” which is an Islamic Armed Group. Investigations against this cell are in close cooperation with other relevant authorities. This led to the arrest of 6 people. During the financial investigation, new bank accounts (“sleepy bank accounts”) of this terrorist group were opened and a large number of transactions had been undertaken. € 326,000 had been sent abroad.<sup>389</sup>

The General Attorney of the National Court of Spain presented the terrorist act of the 11 of March 2004 in Madrid. This act was committed by an important terrorist movement. Thirty perpetrators were caught and sentenced because of terrorist collaboration. Seven terrorists committed suicide after the attack. Four different trains exploded electronically 2 minutes apart from each other in the railway stations in Madrid. The bombs were found in 3 backpacks, in mobile phones. This act was committed by Moroccan Islamists. For the investigative process it was very interesting and important that only 2 of the bombs exploded. The third bomb was used for investigating. The DNA and the backpacks found in the trains were helpful to name suspects. One hundred and ninety people died in this terrorist act. The General Attorney of the National Court of Spain praised the excellent investigative work of the police that discovered which terrorist group committed the crime. The terrorist group which committed this crime was also involved in the attacks of September 11<sup>th</sup> in New York. Seven terrorists died, as mentioned before and 4 escaped. The trial started on 13 of February 2006 with 300 witnesses including forensic medicine experts and analyzers. To find out about how the terrorists operated, the Spanish investigators worked with France, Belgium and Italy by videoconferences. This cooperation worked magnificently as the General Attorney pointed out. Three suspects were arrested for the intent. It was a large terrorist cell. The victims of this attack and their families received all together 1.5 million Euros.<sup>390</sup>

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<sup>388</sup> Presentation of the Deputy Attorney General from Mexico

<sup>389</sup> Presentation of the Head of the International Cooperation and Economic Officer of the Guardia di Finanza from Italy

<sup>390</sup> Presentation of the General Attorney of the National Court of Spain

The Director of Public Prosecution of Ireland presented the case of “McKeritt”, the Head of the IRA, who was prosecuted successfully. The opinions of police officers and victims were allowed in court.

EUROJUST worked on 23 terrorist cases in 2007. The information received was multilateral. Of these 23 cases 5 were of the financing of terrorism. EUROJUST is centralized within international cooperation.<sup>391</sup>

International terrorism exists and no country can affect terrorism because it is centralized. For Interpol, international cooperation is very important. They are working closely with the UN. The Legal Officer of the Office of Legal Affairs of Interpol calls upon the experts participating to share information with them. Of course, restrictions will be respected. Interpol can use shared information to help to investigate in other cases. The request was to provide Interpol with a database with information on relevant terrorist cases.<sup>392</sup>

The President of the International Association of Prosecutors pointed out that there is an annual meeting of 500 prosecutors worldwide to exchange their practical experience. This association was established in 1995. The aim is to elaborate warning systems for States on terrorism. A “service point” was suggested to facilitate the processes in terrorism cases.<sup>393</sup>

The Senior State Counsel of the Department of Public Prosecutions of Kenya presented the terrorist attacks on the American Embassy in Nairobi in 1998 and the terrorist attacks of the “Paradise” Hotel at Kikambala in November 2002. The prosecution of the American Embassy was made in the United States. The owner of the Hotel was an Israeli. Al Qaida committed both of the attacks. Fifteen people committed the bombing of the hotel in 2002. There were 200 Israeli tourists in the hotel. Twelve Kenyans and 3 Israelis died. One suspect was caught on 1 of August 2003. The police was able to identify other suspects with his mobile phone, but there are still some at large. The problem of the Kenyan legislation system is a lack of anti-terrorism legislation. The perpetrators had to be charged with offences of murder and conspiracy under the Kenyan penal law. Within their community, the perpetrators have been described as good people because they pretended to be priests or businessmen, and this is why witnesses became uncooperative. The law amendment from 2003, led to an abolition of confessions to police. In the case of the hotel bombing there was an acquittal of the perpetrators because the court couldn’t use the confessions they made to the police. The

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<sup>391</sup> Presentation of the National Representative of Spain of EUROJUST

<sup>392</sup> Presentation of The Legal Officer of the Office of Legal Affairs of Interpol

<sup>393</sup> Presentation of the President of the International Association of Prosecutors

lack of anti-terrorism legislation and the abolition of police confessions in that case (and in further cases too) can be blamed for the acquittal. Other problems include poorly trained investigators, prosecutors or judicial officers and no or insufficient financial resources.<sup>394</sup>

The case presentations show the different work by the countries, but mutual legal assistance and international cooperation are the two core points which have to be strengthened in order to counter-terrorism successfully. Trials of international terrorist attacks raise different kinds of problems, which would not arise in a domestic case. In a closer examination, the main difficulties mentioned during the case presentations were the distinction between terrorists and guerrillas, as the FARC case demonstrates. This organization has changed over the years from a group of bandits into a terrorist organization. Other difficulties occurred during the investigative processes because of the lack of resources, for example, poorly trained investigators, prosecutors or judicial officers or the procedural order. Another great lack of resources is insufficient financial resources. But, as mentioned before international cooperation can be problematic as seen in the Japanese case presentation because three different countries were involved in the investigation. Each country uses different measures during the investigative process and have to follow a protocol. Therefore, it would be best to facilitate international cooperation. As mentioned in the Spain presentation, international cooperation is able to work successfully. Interpol and the International Association of Prosecutors are aiming to connect States by elaborating warning systems for States, in case a terrorist act occurs or help is needed to investigate terrorist cases. The case presented by Kenya shows how difficult it is to prosecute without a special anti-terrorism legislation. TPB is providing technical legal assistance in order to strengthen international cooperation, helping to elaborate a special anti-terrorism law in national legislation and working together with other international organizations like Interpol or the International Association of Prosecutors.

### **c) Experts comments in the First Conference of the Digest of Terrorist Cases for Practitioners <sup>395</sup>**

Below, are comments made by the experts during the conference meeting. The reason why the author is providing some statements is to give an insight on the topics and doubts during the first conference.

*The Ambassador of Colombia in Vienna refers to the enthusiasm that the first meeting brought to the participants from each country as well as the successful result of it.*

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<sup>394</sup> Presentation of the Senior State Counsel of the Department of Public Prosecutions of Kenya

<sup>395</sup> Notes taken in the First Conference of Elaboration of a Digest of Terrorist Cases for Practitioners, 7-8 February 2008, VIC

*Interpol's comments on the Proposal of the content and the index of the Digest is that the purpose should not be to focus only on the major terrorist crimes, but also more on police cooperation in terrorism or crimes of memberships in organizations. The Spanish General Attorney of the National Court mentioned that terrorist cases are not only the act itself, but are also its preparation and financing, and the attack is only the aim of the act. Political terrorism is more than just the throwing of a bomb.*

*The national legal systems are not harmonized but this and the jurisdiction system are essential in the fight against terrorism and we would be able to prevent terrorist attacks.*

*Another discussion point was about defining terrorism. The UN has defined terrorism in the universal legal instruments and other instruments. Jean Paul Laborde<sup>396</sup> pointed out that the problem is that we are able to define financing or conspiracy, but what we can't touch we can't justify. The International Terrorism Coordinator from the US Department of Justice said that every country has its own definition of terrorism. We have to acknowledge terrorist groups because if not justification is not possible. The UN designates terrorist groups with the Al Qaida and Taliban Sanction List.*

*The Senior Vice President of the Anti-Terrorist Division of France pointed out that it is not easy to cooperate without other countries legislation. A general agreed definition would be very important for international cooperation. But the question is how we can define such legislation.*

*Another point was about the transfer of prisoners, whether or not it is part of the terrorism act. Each country makes their own jurisdictions for their terrorist acts. For the United States, extradition is extraterritorial transfer of individuals for US Prosecution. What about the transfer then? The US Terrorism Coordinator answers that in general, extradition with another State is legally considered a transfer and not an extradition because the process still exists.*

*Another main point of the conference was the role the victims play. The victims of terrorist acts should receive more acceptance.*

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<sup>396</sup> Chief of the Terrorism Prevention Branch

*Suicide bombers are sacrificing their lives in order to go to paradise, but as the Algerian Commissaire divisionnaire de Police a la Direction General de la Surete points out, suicide bombers are unacceptable and they are not heroes at all.*

*Another point of discussion was the role of the prosecutors and judges. For some experts judges, have to deal only with the law and for some experts prosecutors and judges are the same. Human rights are important for jurisdiction. The problem is extradition to other countries because conventions on extradition do not exist in all countries, even though it is of great importance.*

*JP Laborde, Chief of the Terrorism Prevention Branch, was who ended the First Meeting of Elaboration of a Digest of Terrorist Cases for Practitioners.*

Author's comments to the statements provided:

The first conference about elaborating a digest of terrorist cases was successful. The aims expected have been reached but there is still a lot of work to do before the final elaboration of the digest. As the statements show, the experts are arguing about problems arising and not all the questions asked can be answered. For example, it's still unclear if the digest should only include major terrorist cases or also police cooperation in terrorism. Other problems mentioned were that the national legal systems are not harmonized and the often discussed definition of terrorism. Harmonizing national legal systems or to provide other countries with national legislation would facilitate terrorism prevention. It is also very important to acknowledge terrorist groups or organizations in order to justify them. To sum up, it can be said that the first meeting was successful. The two additional upcoming meetings will be the follow-up-actions of the first meeting, the aim being the elaboration of a Digest that includes terrorist cases as a "good practice" for practitioners.

## V. Conclusion

The interests of investigation for this present thesis were, among others, to find out which institutions, measures or documents have been provided by the United Nations to combat terrorism. Within the UN there is the United Nations Office on Drugs and Crime, located in Vienna, and the Terrorism Prevention Branch providing global technical assistance on counter-terrorism. The work of TPB is specifically based on the legal field of preventing terrorism. As we could see, the 16 Conventions and Protocols against terrorism, as well as terrorism related Security Council Resolutions are the main documents TPB is working with. Other entities dealing with counter-terrorism and working closely with TPB are the United Nations Counter-Terrorism Implementation Task Force, the UN Global Counter-Terrorism Strategy and the Counter-Terrorism Committee and its Executive Directorate. TPB aims to implement these mentioned instruments in different countries national legislations so that States create a legal basis to prosecute perpetrators of terrorist acts. What has to be respected in the process of preventing terrorism in general, as mentioned many times in this thesis, are rule of law and human rights principles. The problems and difficulties TPB is facing while providing technical assistance, are States policies, domestic law norms and States commitments in other international treaties. Some Security Council Resolutions, like the often mentioned and cited, 1373 of 2001, is based on the UN Charter and therefore it is legally bound to Member States of the UN. Another problem is that some offences, such as conspiracy, haven't been included into UN anti-terrorism instruments. How important defining terrorism for prosecuting and in general is, was obvious in the chapters dedicated to the definition in this thesis. It is a very detailed chapter because an actual definition would lead to a better prevention of terrorism. At the beginning of the research, one general question asked was if an objective definition of terrorism is possible or already exists and how the UN handles this problem. The hypothesis pointed out at the beginning was: **if an objective definition of terrorism was found, then it would be more effective to prevent and curb terrorist acts.** In general, there are different ideas about a definition of terrorism. Nowadays, we have hundreds of definitions of terrorism. For Herbst, it isn't worth defining terrorism because of its complexity or because one general definition would lead to more problems than it would solve. It is in fact difficult to have an objective view on the definition for terrorism. It is difficult to prevent something which isn't yet defined. We are able to identify terrorism (subjective element of terrorism) as Walter Laqueur pointed out but a definition is still lacking. The different concepts of definitions of terrorism are problematic. Antonio Cassese mentioned that there has been an agreement on terrorism with the exclusion of the liberation movements. Most Arab States exclude self-determination struggles from the definition of terrorism. Others say it has to be included in the definition of terrorism. The

difference between freedom fighters or liberation movements and terrorism, is that freedom fighters fight for their right of self-determination against a government and terrorists fight for a political, ideological or religious motivated idea in order to reach their objectives against a State or government. The struggles during the decolonization process were excluded from this right of self-determination. Civilians are the innocent victims in terrorist acts, because they are the main target of terrorists. The line between freedom fighters and terrorists isn't that easy to perceive. The FARC, for example, is considered to be a terrorist group in Colombia. The FARC itself prefers to be called a *Guerrilla* Group. But as soon as civilians are victims of a struggle or are getting attacked, the group changes into a terrorist group. Maybe the difference between liberation movements and terrorists is clearer because it includes combatants. As mentioned, the principle of the distinction, under international law, between combatants, civilians and protected persons, is that combatants are considered to fight against a States military. Civilians are protected from any military attacks and are in fact not allowed to join military action. Therefore, freedom fighters fight for their right of self-determination against the military of a State and terrorists fight for their ideologies (political or religious) against all.

To get back to the hypothesis mentioned, it can be said that from the points of view of the investigations, this hypothesis can be agreed upon. It wasn't possible to find a definition of terrorism in this present thesis because of the problems mentioned above. There were some definitions in some international treaties close to be generally agreed definition, but they were once again too vague.

A general agreement of a definition of terrorism would facilitate its prosecution and it would also leads to more effective law enforcement within the international community. Therefore, this thesis: **A general agreed definition of terrorism leads to more effective law enforcement within the international community**, as mentioned above, can be approved, too.

The main question asked was **if the United Nations is able to successfully target terrorism and if the Terrorism Prevention Branch is the appropriate instrument to reach this aim**. From the point of view of the research included in this present work, this thesis can be approved. The Terrorism Prevention Branch is one instrument of the UN to prevent and combat terrorism on an international basis.

Terrorism is not included under the jurisdiction of the International Criminal Court, which means that it is not yet an international crime and therefore, not applicable under the



International Criminal Court. Another general question was why this is so and if terrorism should be isolated from other international crimes. One reason for this isolation is because there is no definition of terrorism as an international crime. Further reasons for terrorism not seen as an international crime is because it would have politicized the ICC and terrorism should be and would be more effectively prosecuted and punished under domestic laws. Another problem of prosecuting terrorism under national law is extradition or mutual legal assistance. To harmonize International criminal law it would be important to facilitate extradition of terrorist perpetrators. One hypothesis mentioned was that **if States were internationally linked on counter-terrorism matters, then a more successful combat against international terrorism is possible**. This hypothesis has to be approved because international harmonization was the core problem often mentioned during the research.

Within international law the principle “aut dedere, aut judicare – to extradite or prosecute” is important for States because after a terrorist attack, they have to either prosecute perpetrators in their trials or they have to extradite terrorists into another State. Extradition is problematic because States do have different legislation systems, also because of the gathering of foreign evidence. The example described in this thesis demonstrates the problems. The United States and the European Union signed a treaty about extradition and mutual legal assistance in July 2003. The European Union did not agree on the point that the United States is able to sentence suspects with the death penalty. The United States complained that their extradition requests were not considered by the European Union. This example demonstrated on the one hand the problems of extradition but on the other hand this is a good example on how to reach international cooperation by accepting compromises.

Two main key words used in this thesis besides rule of law and human rights principles are mutual legal assistance and international cooperation. The third hypothesis mentioned at the beginning was: **If an increase of international sanctions against terrorism were intensified, then a more effective prosecution is possible**. Terrorism nowadays, is easier to prosecute on a national legal basis. Mutual legal assistance and international cooperation are two core points which have to be strengthened to be successful against terrorism. States should provide others with more information on terrorist cases in order to facilitate the international fight against terrorism. The international network against terrorists has to be strengthened and widened. The international and national sanctions against terrorism have to be intensified in order to assure a more effective prosecution. International cooperation on counter-terrorism measures has to be strengthened among Member States, starting in the investigation process. This would lead us to faster and more successful criminal proceedings

of international terrorism. Therefore, this hypothesis can be approved and it can be said that **Terrorism has risen because of the failure of international sanctions of States.**

The implementation of international legal instruments is one step further in more effectively prosecuting terrorism on a domestic basis. Within the UN criminal justice system, rule of law standards are incorporated in the UN anti-terrorism instruments and their implementation. It is Important to combine the international conventions and protocols against terrorism with international instruments based on human rights and rule of law. The problem of implementing international measures against terrorism is because human rights, rule of law and criminal justice standards have to be included, too. The ICCPR is based on criminal justice rights and has been accepted by more than 150 Member States. The follow up actions in response to individual acts of terrorism are also very important. Member States have problems with implementing the Security Council Resolutions because for the SCR 1373, Member States have to submit a report to the Counter-Terrorism Committee. Through the binding level of this Resolution, Member States have to incorporate it into their domestic laws. States have other international binding agreements which have to be considered, too, such as agreements on human rights.

Another criticized document on terrorism is the “Al Qaida and Taliban Consolidated Sanction List” of persons and entities. This list is provided by the “UN Al Qaida and Taliban Sanctions Committee”. People on this list are not allowed to travel (they have no passports) and their assets are frozen. This list contains the names and functions of former Taliban members.

On where terrorism comes from or its historical beginning, it can be said that after the Second World War and the rising of new States during the decolonization process, the lacking of international sanctions of States was one reason for the new terrorism. Terrorism in fact, exists since the 19<sup>th</sup> Century. The origins of terrorism are numerous. Antonio Cassese points out the Second World War provoked a great difference between the rich and the poor and new phenomenon such as nationalism or religious fundamentalism emerged.

The already known thesis is that the increase of the funds for counter-terrorism measures would strengthen terrorism prevention and of course this thesis can be approved true. The UN is the principle enemy of terrorist groups and organizations as they are providing global counter-terrorism measures. Therefore, the thesis that **the UN efforts on counter-terrorism convert the UN into a target of international terrorism** is approved.

The United Nations is a key actor under international law and international terrorism in international law is relevant when a State is involved in a terrorist act. Article 51 of the UN Charter allows the right of individual and collective self-defence. The UN Charter is based on international law. The three main difficulties with use of force as self-defence in accordance with international law, especially in case of terrorist attacks are: the terrorist acts have to be an act of a State (not an individual), the attack has to be comparable for example as in an inter-State combat and the armed attack has to be ongoing when a State wants to use the right of self-defence. What is still unclear in international law is, how to take action if the terrorist act has been organized on the territory of a State but not been conducted from this State. Concerning the attacks of private individuals on the high sea or in a plane above the high sea, the attacked State has the right to take counter-measures without breaching Article 2 [4] of the UN Charter. Failed States are another scenario in international law and terrorist attacks. Failed States would be under the protection of the UN. The military attacks from the United States against Afghanistan in 2001 are very controversial under international law. The United States justified their right of self-defence to the UN and the community of States. The UN Security Council authorized the use of force for right of self-defence with Resolution 1368 (2001). There are still some questions about the right of self-defence and the military invasion of the United States against Afghanistan wasn't entirely in accordance with international law. Terrorism challenges international law. In fact, terrorists are not mentioned as such under international law, they are criminals and can be brought to jurisdiction in every State.

As for the concept of Terrorism, it is necessary to say that it is not to be considered the same as usual crimes. Terrorism is almost a new form of warfare because it causes death and violence in an effective way.

The role of the UN today challenges the adjustment of Member States and therefore the UN has to reach the next phase in order to be more relevant and focused on the new phenomenon. How to reform the UN is still unclear. There are different ideas, for example to expand the Security Council or to give the control of the Security Council to more UN organs. The fact is that the UN structure was designed to protect the world from another world war, but nowadays problems such as environmental or terrorist threats or deadly diseases are increasing. Terrorism used in connection with weapons of mass destructions (chemical, biological or nuclear) is more frightening. The veto rule is another important concern for the Security Council. One country of the Permanent Five Members of the Security Council can use its veto rule and the other countries have to accept it. With the veto rule the UN doesn't have the strength it should have since it was established. One question in this thesis was if

the Permanent Five are blocking the active role of the UN because of their fear of losing influence and political autonomy. At some point this is true, as the case example of the US invasion in Afghanistan demonstrates.

Collective security has three pillars in the UN system: No State can fight today's threats alone, today's threats are not national but rather international and States have the responsibility to protect their people and not to harm other States. Collective security is the main issue within the UN. The League of Nations failed because of the absence of collective security. In order to fight terrorism, more security should not stand in the way of the limitations on privacy or freedom of press or opinion.

Today the UN provides, among other things, and as a core element, peace keeping missions which are not mentioned in the UN Charter. It has to handle more problems and different kinds of problems. In order to strengthen international cooperation and effectiveness on counter-terrorism, the UN has to reform. It isn't clear how, but it has to be done.

The international relation theories are realism, idealism and institutionalism. The idea of the creation of the UN was idealistic, but over the years it changed from an ideologically based organization to a more institutionalized organization. International cooperation is based on realism, but the UN as a collective transnational actor is based on idealism and nowadays it is part of the neo-institutionalism. Some people would like to see the UN acting as a world government. The "one world" theory would approve that in order to reach world peace. This world government has to be established in a democratic system with power sharing and the separation of powers. Some say that this world state would lead to the end of history because perfection would have been reached, but there will be always something new to achieve, so this wouldn't be the end of history. Could the UN be capable of reaching the status of being a world government? The UN has to overcome international anarchy, which is the States fear of losing self-control. States have to identify themselves in order to be able to coexist in a society of other States. Supranationality is the opposite of sovereignty. The UN is a supranational actor. The critical theory aims to change the international system into a world society and it tries to undermine the role of realism in international politics. International institutions promote world peace. Some say (from a realistic view), that this is a false promise because realism doesn't need institutions to achieve peace and the world isn't working the way this theory pretends, but they influence decision making-processes and world policy. Realism believes war is inevitable, and States are good and bad. In contrast, there is the promise of institutional theories which are characterized of sustained cooperation in what

States can hope for. Collective security has an important role for promoting peace and security.

The practical aspects presented in this present thesis should give an idea on how the Terrorism Prevention Branch is working. The case presentations demonstrated the different work of countries. Above all, the experts pointed out the importance of mutual legal assistance and international cooperation on investigating and prosecuting terrorists. These are the two core points which have to be strengthened in order to fight terrorism successfully. Fulfilling these issues on an international basis is more difficult than on a national level.

This present thesis tried to list the measures taken by the UN against terrorism, described the problem of defining terrorism and in general, the role of the United Nations. The Terrorism Prevention Branch is an appropriate instrument of the United Nations in order to combat Terrorism. In general, there are lots of ideas and debates on how to deal with these issues but unfortunately there is no general agreed consensus in the international community in this endless debate on terrorism prevention.

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UNODC Document on the **role UNODC plays** in the contribution to the work of the CTITF

- **Figures:**

Fig. 1:

<http://www.un.org/secureworld/report2.pdf> (18<sup>th</sup> of May of 2008)

Fig. 2: The United Nations system

<http://www.un.org/aboutun/unchart.pdf> (29<sup>th</sup> of May of 2008)

Fig. 3: United Nations Office on Drugs and Crime (UNODC)

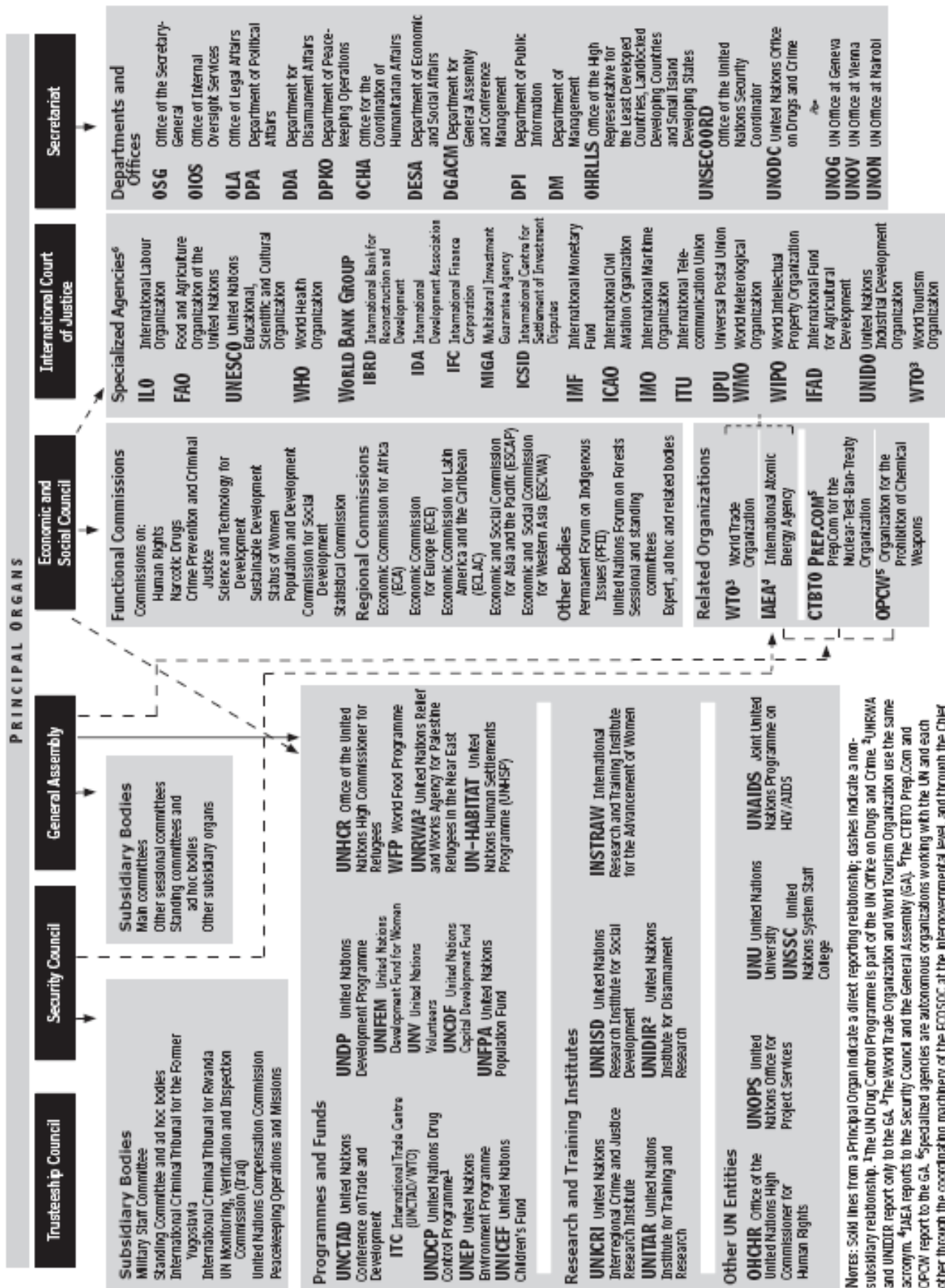
[http://www.unodc.org/pdf/unodc\\_chart.pdf](http://www.unodc.org/pdf/unodc_chart.pdf) (29<sup>th</sup> of May of 2008)

Fig. 4: Security Council Resolution 1373 of 2001

TPB Brochure: Security Council Resolutions relevant to the fight against terrorism



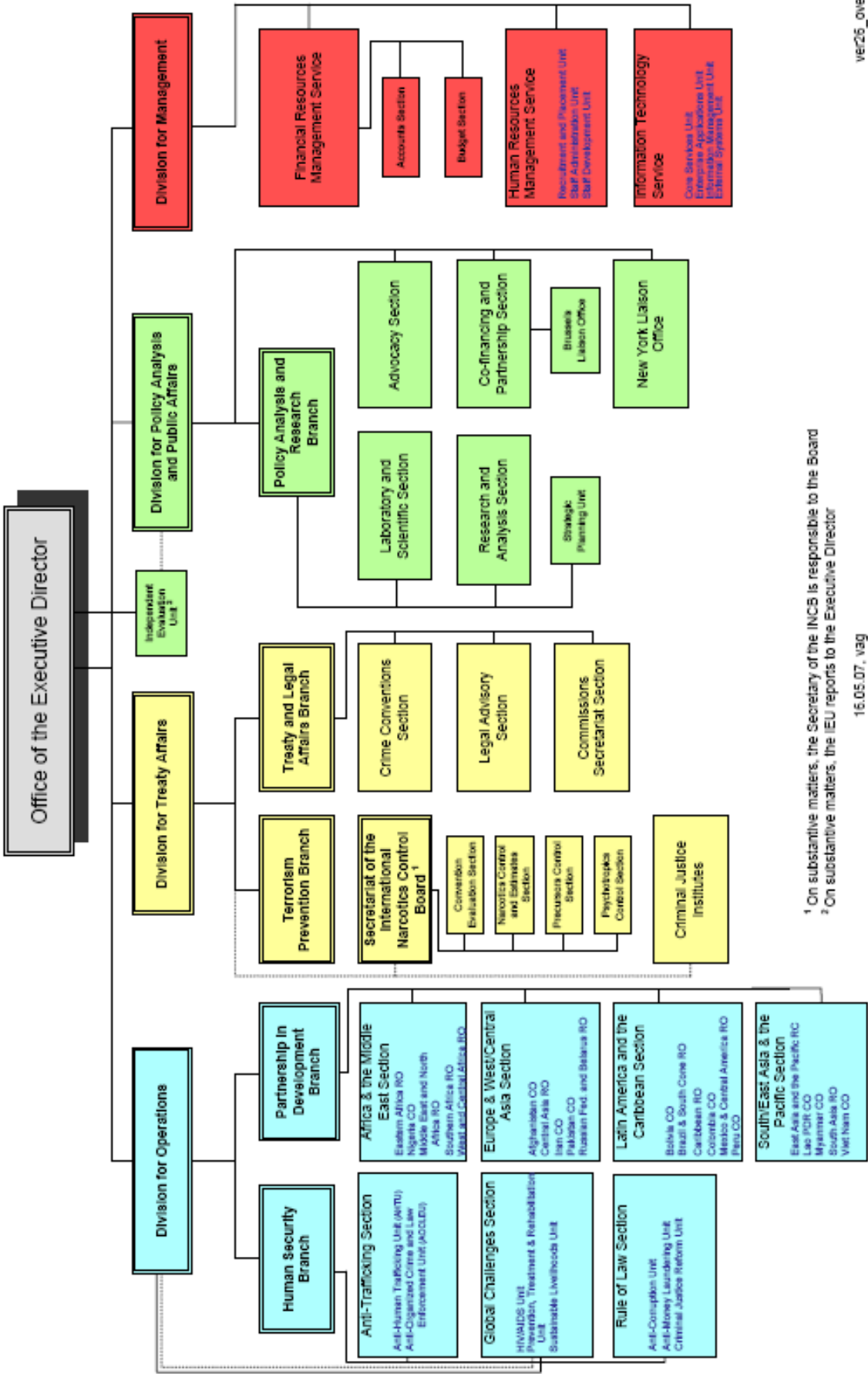
# The United Nations system



Published by the UN Department of Public Information  
DPI/2342—March 2004

United Nations Office on Drugs and Crime (UNODC)

Fig. 3



<sup>1</sup> On substantive matters, the Secretary of the INCB is responsible to the Board

<sup>2</sup> On substantive matters, the IEU reports to the Executive Director

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Fig. 4

### **Resolution 1373 (2001)**

Adopted by the Security Council at its 4385th meeting, on  
28 September 2001

The Security Council,

Reaffirming its resolutions 1269 (1999) of 19 October 1999 and 1368 (2001)  
of 12 September 2001,

Reaffirming also its unequivocal condemnation of the terrorist attacks which  
took place in New York, Washington, D.C. and Pennsylvania on 11 September 2001,  
and expressing its determination to prevent all such acts,

Reaffirming further that such acts, like any act of international terrorism,  
constitute a threat to international peace and security,

Reaffirming the inherent right of individual or collective self-defence as  
recognized by the Charter of the United Nations as reiterated in resolution 1368  
(2001),

Reaffirming the need to combat by all means, in accordance with the Charter  
of the United Nations, threats to international peace and security caused by terrorist  
acts,

Deeply concerned by the increase, in various regions of the world, of acts of  
terrorism motivated by intolerance or extremism,

Calling on States to work together urgently to prevent and suppress terrorist  
acts, including through increased cooperation and full implementation of the relevant  
international conventions relating to terrorism,

Recognizing the need for States to complement international cooperation by  
taking additional measures to prevent and suppress, in their territories through all  
lawful means, the financing and preparation of any acts of terrorism,

Reaffirming the principle established by the General Assembly in its  
declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security  
Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has  
the duty to refrain from organizing, instigating, assisting or participating in terrorist  
acts in another State or acquiescing in organized activities within its territory directed  
towards the commission of such acts,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that all States shall:
  - (a) Prevent and suppress the financing of terrorist acts;
  - (b) Criminalize the wilful provision or collection, by any means, directly  
or indirectly, of funds by their nationals or in their territories with the intention that



the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

(c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

(d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

2. Decides also that all States shall:

(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;

(b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;

(c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;

(d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;

(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;

(f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;

(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

3. Calls upon all States to:

(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;

(b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;



(c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;

(d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;

(e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

(f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;

(g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;

4. Notes with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, sub-regional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;

5. Declares that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;

6. Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and calls upon all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution;

7. Directs the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of this resolution, and to consider the support it requires, in consultation with the Secretary-General;

8. Expresses its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter;

9. Decides to remain seized of this matter.

## **Zusammenfassung – Terrorismusbekämpfung der Vereinten Nationen**

Die Vereinten Nationen im 21. Jahrhundert stehen neuen, schwierigen Problemen gegenüber, wie zum Beispiel einer der bedrohlichsten Gräueltaten der Menschheit, dem internationalen Terrorismus. Während der letzten 10 Jahre hat sich der internationale Terrorismus zu einem globalen Problem entwickelt, das neue Formen angenommen hat. Die Vereinten Nationen haben zahlreiche Sicherheitsrats-, Generalversammlungs-, und Wirtschafts- und Sozialratsresolutionen gegen Terrorismus ratifiziert. Die Abteilung für Terrorismus-Prävention des Büros der Vereinten Nationen für Drogen und Verbrechen (TPB/UNODC) bietet den VN-Mitgliedsländern, auf Anfrage, rechtliche Hilfestellung zur Terrorismusbekämpfung an. Die für die Ausführung dieser Initiative problematischen Aspekte liegen in der internationalen Kooperation der Mitgliedsländer, in der gemeinsamen rechtlichen Hilfestellung der Mitgliedsländer, in der Auslieferung verdächtiger Personen, in der Stärkung der staatlichen Kapazität und in der Gewährleistung der Menschenrechte und der Rechtsstaatlichkeit. Ein weiteres wichtiges Element, um die Effektivität auf dem Gebiet der Terrorismus-Prävention zu erhöhen, ist eine Annäherung an die Definition des Begriffs Terrorismus. Das kollektive Sicherheitssystem der Vereinten Nationen, sowie auch die Rolle der Vereinten Nationen an sich, müssen gestärkt werden um effektive Maßnahmen gegen internationalen Terrorismus zu etablieren. Noch ist es ungewiss, wie die Vereinten Nationen reformiert werden müssen und die kollektive Sicherheit gestärkt werden muss, um die gewünschten Ziele zu erreichen, jedoch ist es wichtig, weitere Schritte in Richtung einer Reform der Vereinten Nationen zu richten.

## **Abstract – Terrorism Prevention in the United Nations**

The UN is facing different kinds of problems in the 21<sup>st</sup> Century. One of the most threatening atrocities of global humanity is international terrorism. In the last ten years terrorism has become a global threat to all States. The United Nations adopted several Security Council, General Assembly and Economic and Social Council Resolutions as well as other Documentary on Counter-Terrorism. The Terrorism Prevention Branch of the United Nations Office on Drugs and Crime is providing technical legal assistance to Member States upon request. The core problems of these initiatives taken by the UN are international cooperation, mutual legal assistance, strengthening States' capacity, extradition and the protection of human rights and rule of law principles. Defining terrorism is another important subject to make terrorism prevention more effective. The collective security system of the UN and the role of the UN itself, have to be strengthened to allow the establishment of competent counter-terrorism measures. It is unclear which measures should be taken in order to reform the UN and improve collective security, but in fact, it has to be done.

## LEBENS LAUF

Judith Raffelseder

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### Persönliche Daten:

Geburtsdatum: 10. November 1983  
Geburtsort: Linz, Österreich  
Nationalität: Österreich

### Ausbildung

#### Universitäre Ausbildung

Oktober 2003 – November 2008 *Universität Wien, Österreich*  
Diplomstudium der Politikwissenschaft, Institut für Politikwissenschaft

September 2006 – Juni 2007 *Universität Valladolid, Spanien*  
Studium der zeitgenössischen Geschichte, sozialwissenschaftliche Fakultät, ERASMUS Programm

Februar 2006 *Universität Habana, Cuba*  
Fakultät für Philosophie, Studienreise

Oktober 2005 *Universität Wien, Österreich*  
Diplomstudium der Romanistik - Spanisch

März, April 2005 *Hauptquartier der Vereinten Nationen in New York*  
Studienreise

#### Schulische Ausbildung

Juni 2003 Matura an der Handelsakademie Steyr, Österreich

### Praktika

August-Oktober 2008 *Österreichisches Honorarkonsulat in Guadalajara, Mexiko*  
Allgemeine Konsulartätigkeiten (Visaanträge)

September 2007 – Februar 2008 *Internship bei den Vereinten Nationen, Wien, Österreich*  
UNODC/TPB (United Nations Office on Drugs and Crime/Terrorism Prevention Branch)

Juni 2006 *Konfliktforschungsinstitut, Wien, Österreich*  
Projekt über österreichische Frauen in deutschen Konzentrationslagern